

## **The complaint**

Mrs K complains that National Westminster Bank Plc (NatWest) has not fully refunded her for the loss she has suffered as a result of a scam.

## **What happened**

Mrs K was friends with a woman I will call A, they had known each other for many years. So, in 2017, when A told Mrs K that she was having various difficulties with money, Mrs K was willing to help. Over the next few years A told Mrs K various reasons why she needed financial assistance, these included help with general day-to-day expenses (as she said she was not receiving benefits), assistance with legal costs, and with fees and charges A said her banks were applying to her accounts. Payments also appear to have been made for some kind of investment scheme – although we have been given no details of what that scheme might have been. Throughout this period, A repeatedly promised that she would ultimately be able to repay Mrs K.

Over a period of around six years Mrs K made over 2,000 payments to, or on behalf of, A. These payments totalled over £300,000. In 2023 Mrs K's son discovered what had been happening and told Mrs K that she was being scammed. Ultimately, A was arrested and charged with fraud by false representation, she received a prison sentence.

Mrs K asked NatWest to refund her losses. She has said that she was under A's coercive control and was vulnerable at the time. NatWest refunded £219,885 to Mrs K, as it said it could identify that these payments specifically related to legal costs that A had fabricated. It did not agree to refund the remainder of Mrs K's loss as it said it was not clear that those payments had been made with any expectation of them being repaid.

Mrs K did not feel this was fair, so she asked us to consider her complaint. One of our Investigator's looked into what had happened, but overall they felt that what NatWest had already done was fair. They did not consider that Mrs K was entitled to a further refund.

Mrs K maintained that this was unfair, she thinks she should receive a full refund of her loss as everything A had told her over the years appeared to be a lie, and so should be considered part of a scam. As no agreement could be reached this case has now been passed to me for a decision.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm sorry to hear about what happened to Mrs K, but I have to recognise that the main cause of her loss here was A. I must also take into account that NatWest has an obligation to carry out the payment instructions its customers give it. As a starting point, a customer is therefore assumed liable for a payment they have instructed to be made.

But even with that in mind, where a customer has made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for a bank to reimburse its customer even though the customer authorised the payment.

Amongst other things, NatWest has a responsibility to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. Additionally, from 28 May 2019 onwards, the payments Mrs K made were covered by the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. This voluntary code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances, and NatWest is a signatory to the CRM Code.

#### *Payments made before 28 May 2019*

Prior to the CRM Code coming into force, I would still have expected NatWest to be on the lookout for signs that Mrs K could be at risk of financial harm. And, if it identified any such signs, for it to have intervened to question the payments she was making.

However, looking at the payment Mrs K made to A between 2017 and 28 May 2019, I can't see that there would have been any clear sign to NatWest that those payments were unusual or a potential indicator that Mrs K was at risk of financial harm. I say this because, overall, the payments were relatively low, with the majority of them below £100 and only one payment being over £500. I don't doubt that the payments made during this time represented a significant financial loss to Mrs K, but from NatWest's point of view I don't think that the value of the payments or the pattern of spending would have given it any particular cause for concern.

I therefore do not consider that there was anything I would reasonably have expected NatWest to do to prevent these payments, so I do not think it would be fair or reasonable to say NatWest should refund them to Mrs K.

#### *Payments made from 28 May 2019 onwards*

These payments were made at a time when the CRM Code did apply. But despite offering additional protections, the CRM Code includes provisions allowing a firm not to reimburse losses fully in some circumstances. Those circumstances include:

- where the customer made a payment without a reasonable basis for believing that the person they were dealing with was legitimate, was providing a genuine service, or that the payee was the person the customer was expecting to pay.
- where the payment does not meet the definition of an APP scam payment, as defined by the code.

I have set out the definition of an APP scam as set out in the CRM Code below:

*...a transfer of funds executed across Faster Payments...where:*

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

NatWest says it has refunded to Mrs K all the payments that it can identify are associated with A's specific claims that the money was required for legal costs associated with court cases. It says this is because it is now aware that no such court cases existed, so it can be reasonably concluded that these payments were not made for the reasons Mrs K believed they were being made for. It says that the remaining payments appear to have been for other purposes and that it therefore does not consider that they met the definition of payments made for an APP scam as it is unclear what, if anything, Mrs K expected back from A relating to those payments.

I've thought very carefully about what NatWest and Mrs K have said here, and it is clear that this is an extremely complex situation. Given the extended period of time that Mrs K made payments to A for, we also don't have detailed information about exactly what all the payments Mrs K made were for – for example, we only have copies of the messages between Mrs K and A from June 2022 onwards. This means that it is extremely difficult to determine whether any individual payment from before then was made as a result of deception on A's part (ie. she told Mrs K it was for a specific purpose and then did not use it for that purpose) or whether it was a payment made just to 'help A out' when she was struggling. And even for the period when we do have copies of the messages between Mrs K and A, there are some payments where it is not clear what Mrs K is making the payment for.

With this in mind, I think it would be very difficult to fairly say that every single payment Mrs K made to A over the period where the CRM Code applies could be definitely considered as an APP scam payment. I appreciate that Mrs K says she was under A's coercive control, but that does not necessarily mean that she didn't know what the payments she was making were intended to be used for.

However, even if we did consider that all of the payments made to A from 28 May 2019 onwards met the definition of an APP scam, that still does not mean that Mrs K would be entitled to a full refund of all of those payments. As noted above, NatWest would not be obliged to reimburse Mrs K in full if it could be established that Mrs K made the payments without a reasonable basis for believing they were for a legitimate purpose. In considering this point, I've carefully considered everything Mrs K has submitted as well as the evidence submitted by the bank.

By the time the CRM Code came into force, Mrs K had been making payments to A for around 18 months, she then went on to make regular payments to A for more than four more years, without apparently receiving anything much in return. It is difficult to see why Mrs K continued to make such a large volume of payments to A when the promised repayments from A never happened. I think it is reasonable to say that there comes a point, much earlier than 2023, when Mrs K should have stopped what she was doing and either asked for proof that there really were funds due to A which would be used to repay her, or challenged A on what she was claiming.

I've also carefully considered Mrs K's representations regarding her circumstances and vulnerability to the scam. But I don't consider that Mrs K's circumstances meant she was unable to protect herself from this type of scam - I do not consider she was vulnerable in terms of the Code.

With all this in mind, I think it is fair to say that when Mrs K made the transfers that are covered by the Code, she did so without a reasonable basis for believing she was making those payments for a legitimate reason. This means that, as set out in the Code, NatWest does not need to fully refund her for her loss even though this was likely the result of a scam.

However, under the terms of the Code a bank may still be required to partially reimburse a customer in circumstances where it hasn't met the standards set for firms by the Code. That would include requirements in terms of funds recovery or in taking sufficient steps to protect the customer from falling victim to a scam.

If NatWest had failed in its obligations to protect Mrs K then I would expect it to refund 50% of her loss at the most, given that, as set out above, I also consider Mrs K should bear some responsibility. And I'm aware that NatWest has already refunded significantly more than 50% of Mrs K's total loss.

With all of the above in mind, I don't consider that NatWest needs to do more than it has already done and so I am not recommending that it refund more than the £219,885 it already has paid to Mrs K.

I understand that this will be very disappointing for Mrs K, and I recognise what the loss of this money has meant for her. But I am satisfied that NatWest has treated her fairly in the circumstances of this case.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 20 February 2025.

Sophie Mitchell  
**Ombudsman**