

complaint

Mr T complains, on behalf of his partnership, that National Westminster Bank Plc failed to process an overseas payment request correctly and in good time.

background

Towards the end of December 2012 one of the partnership's clients asked it to send £15,000 to a third party's account based overseas. So Mr T completed an overseas payment request using the partnership's online banking facility. NatWest converted the money to the destination country's currency and sent it as requested, the following day.

Ten days later Mr T became aware that the receiving bank had refused to accept the payment because it had been sent using an incomplete International Bank Account Number (IBAN). He spoke to one of the bank's employees and sent a fax confirming the correct IBAN and asking that the money be sent in sterling rather than the local currency. NatWest re-sent the payment that same day in the local currency.

The receiving account was held in sterling so the payment was returned again six days later. Mr T discussed the matter further with the bank and agreed to have the returned money converted back to sterling and paid back into the partnership's account. The difference in exchange rates meant only £14,567.89 was credited to the account.

Mr T complained that, because the money had failed to arrive in time, the third party for whom the money was intended had been unable to pay the balance on a vehicle they had committed to buying. This meant they lost the right to buy the vehicle and also lost the deposit paid when they entered into the contract. He said the third party intended on passing on its losses to the partnership's client who would then seek to reclaim the losses from the partnership.

I issued a provisional decision in February 2014 in which I set out why I was not minded to uphold this complaint. I concluded, in summary, that:

- I couldn't hold the bank responsible for the first payment not being accepted by the receiving bank. This payment was likely returned because it was sent with an incomplete IBAN. It seemed more likely than not Mr T included unnecessary spaces in the IBAN when he completed the online transfer request form.
- I couldn't hold the bank responsible for the first payment being sent in the local currency. NatWest said its transfer form automatically selects the local currency of the receiving bank. I also considered it likely Mr T would have seen a page confirming the details of the payment – which included the fact the money would be converted to the destination country's currency – after completing the initial payment request page. It was Mr T's responsibility to check the payment details were correct before confirming it should be made.
- I was satisfied the second payment was returned because it was sent in the destination country's currency yet the receiving account was held in sterling. I accepted Mr T asked, in his fax, for the payment to be sent in sterling. But it also seemed Mr T told the bank's staff on the same day that the receiving bank would credit the money to the intended account regardless of what currency it was sent in. So I concluded that the bank's staff may not have fully understood the importance of sending the money in sterling.

- Had NatWest changed the money back into sterling between the first and second payment being sent then an exchange rate loss might have occurred at that date. This is what eventually happened after the second payment was returned by the receiving bank and the money converted back to sterling.
- I wasn't persuaded the bank had made a mistake so I didn't award anything in addition to the £100 compensation it had already paid. But even if I had reached a different opinion I didn't think Mr T had shown that the partnership or its client had suffered a loss. I said that because:
 - I accepted the partnership's client entered into a contract in December 2012. And I accepted the £15,000 payment was intended for that same client. But I was not convinced the £15,000 payment was solely for the purpose of fulfilling that contract. The payment description made no reference to the purchase but instead referred to a "loan" from the partnership's client. And the payment did not seem to have been sufficient to meet the final payment that was required – the payment converted to 725,931.23 in the local currency whereas the client required 1,080,000.
 - A further £15,000 was sent from the partnership's account to the overseas account the day after the second payment was returned to the partnership's account. Mr T said he didn't know why this payment was sent. It seemed to me, if I accepted the *original* £15,000 payment *did* relate to the specific purchase, that *this* £15,000 payment might have been made because the seller agreed to extend the final payment date. If that were the case, that would mean the deposit hadn't been forfeited so the client would have suffered no loss for which the partnership could have been held responsible.
 - Mr T said he didn't know why the client asked for £15,000 (as opposed to any other amount) to be sent in the first place. And he suggested, if this was not enough to pay the final amount specified in the contract, that there might have already been some money in the overseas account that could have been called upon. Nor did Mr T know why the £15,000 transfer was made the day after the second payment was returned to the partnership's account. But both payments were made from the partnership's own account – instead of from a client account. So I thought it possible the money being sent was the partnership's own money which it was, in effect, lending to its client. In that sort of situation it surprised me that the partnership knew so little about its client's intentions.
 - We had asked for evidence that the partnership's client had suffered a loss but this had not been provided at the point that I issued my provisional decision. I thought it rather strange that the partnership was willing to accept it should be held liable for losses that the client had not actually evidenced.

NatWest accepted my provisional findings but the partnership did not and said I had failed to provide it with copies of the documents that had been material to my decision. The partnership said, in summary, that:

- It was inappropriate for me to reach my decision on the balance of probabilities. I should have based it on factual evidence but failed to do so. What I had said also demonstrated that I didn't understand the facts of the case or the law.

- It was unfair of me to conclude that Mr T made a mistake with the IBAN when he completed the online transfer form without asking the bank to provide evidence to prove this is what had happened. Mr T had not been given a copy of the transfer form in order to verify its authenticity.
- I should not have guessed whether or not the online transfer request was a two-stage process. I should have asked the bank about this.
- Mr T did not tell the bank that the transfer would be accepted if sent in the local currency and it was unfair of me to accept the bank's suggestion that he did. Mr T specifically told the bank, in his fax, that the money should be sent in sterling but the bank disregarded this instruction. Mr T's fax should have taken precedence over any oral conversation.
- I failed to take into account that the bank was told how important it was to send the money in sterling by a certain deadline. The bank failed in its duty of care and the partnership will incur financial losses as a result.
- The partnership was asked to send a specific amount of money by way of a loan. It is not the partnership's practice – nor is it ethical – to ask a client why such payments are required. I had misunderstood the solicitor-client relationship when reaching my decision.
- The reason the seller of the vehicle decided to extend the deadline for payment was a matter between the seller and the buyer.
- It was wrong for me to say I had not seen evidence of the financial loss suffered. I had been given the original purchase contract which stated the deposit would be forfeited if the balance wasn't paid by a certain date. A letter dated the day after that deadline from the intended recipient of the money confirms that the deposit was forfeit.

After receiving the partnership's response I asked the bank for some further information and shared with the partnership both these items and some other documents I already held. In response the partnership said, in summary, that:

- It now accepts Mr T might not have entered the full IBAN when he first submitted the transfer request. But this matter has identified two faults in the bank's online transfer request process. The first that the system is incapable of taking long account numbers. And the second that the system automatically converts funds to the local currency.
- The bank ignored its written request to send the second transfer in sterling – this request was sent by fax after the telephone call with the bank. NatWest accepted it made this mistake and paid £100 compensation. It should also pay the financial losses that resulted from its mistake.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also taken into account any relevant regulatory rules, the law and good industry practice applicable at the time the matters complained about took place.

Where there is a dispute about what happened, I base my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the evidence.

I said in my provisional decision that the money the partnership was trying to transfer was intended for one of the partnership's clients. But I now realise that was not the case. The payment was requested by one of the partnership's clients but was intended for a third party. And it was that same third party that entered into the contract to buy the vehicle. This does not materially affect my decision but I think it worth pointing out my misunderstanding.

did the bank make a mistake with the first payment?

I am not persuaded by the partnership's suggestion that there were faults in the bank's online transfer request process. I see nothing inherently wrong in a process which automatically sets the currency to that of the destination country. Or that allows a maximum number of alphanumeric characters to be entered in a certain field.

NatWest has now confirmed, as suggested in my provisional decision, that the transfer request was a two-stage process. And I remain satisfied it was for Mr T to ensure he had entered the correct, full IBAN and was happy with the currency in which the transfer was to be sent before he confirmed that he wished to go ahead with the payment.

I remain satisfied that the bank made no mistake when it acted on Mr T's first payment request. It was not the bank's fault that the first payment did not reach the recipient's account.

did the bank make a mistake with the second payment?

It seems to me that the partnership might be confused about the order in which correspondence took place with the bank after the first payment failed to go through. The evidence suggests that a telephone call took place at 15.30, Mr T's fax was received at around 15.40 and another call took place at 16.13.

I have now been able to listen to the call that took place after Mr T sent his fax to the bank which confirmed the details of his payment request. But the bank has still been unable to provide a recording of the earlier call, in which Mr T first reported the problem so I can't be sure exactly what was discussed.

However, the bank took notes of the first conversation which are limited, but I accept they suggest Mr T mentioned that the payment should have been sent in sterling. Similarly, there is a handwritten note on the fax he then sent which confirms he wanted the payment to be sent in sterling.

I also accept there was discussion about how the payment should be sent in the second call. Mr T may have thought the payment would be sent in sterling as a result of the fax he sent and that second conversation. But that was not explicitly agreed. And I think the bank employee finished the call with the understanding that the money was to be sent in the local currency again. I say this, not least, because the employee's notes suggest he understood from his conversations with Mr T that the payment would credit the recipient's account whether it was sent in sterling or the local currency. Also, as I mentioned in my provisional decision, the money from the first payment had not yet been converted back into sterling and returned to the partnership's sterling account.

Overall, I think the bank's employee reasonably thought he was doing the right thing by sending the money again in the local currency rather than converting it back into sterling – which might have resulted in an exchange rate loss – before sending it.

should the bank be responsible for the losses the partnership says its client has suffered?

For the reasons set out in my provisional decision and summarised above I am still not satisfied that the partnership has shown that it has suffered a financial loss. But, in any event, as I am not persuaded that the bank made a mistake it would not be fair to instruct it to cover any losses that might be passed on to the partnership.

my final decision

My final decision is that I do not uphold this complaint.

Ruth Lewis
ombudsman