

complaint

Mr and Mrs S are unhappy with the way National Westminster Bank Plc responded when they fell victim to a scam.

background

In December 2017 Mr and Mrs S, who were in their early seventies at the time, sadly lost £40,000 as a result of a 'safe account' scam.

Mr and Mrs S have told us that on the morning of 19 December 2017, Mrs S was called by someone claiming to be a fraud investigation officer from NatWest. It's not in dispute that the caller was in fact a scammer, so that's how I'll refer to him throughout this decision. The scammer told Mrs S that he needed to speak to Mr S. Mrs S told the scammer Mr S wasn't at home, and she also told him Mr S was deaf, so he wouldn't be able to talk on the phone anyway.

The scammer proceeded to tell Mrs S that two fraudulent transactions had been attempted on their account, and that someone from NatWest's fraud office would call them back once Mr S returned. The scammer gave Mrs S a password. He told her he would disclose this password whenever he called so that they could be sure they were talking to a genuine person from NatWest's fraud office.

Later that morning Mr and Mrs S were contacted again. This time a different person was calling, again claiming to be from NatWest's fraud team. Mr and Mrs S recognised the caller's number to be NatWest's telephone number (it would appear the scammer was 'spoofing' NatWest's telephone number – in other words the scammer was able to mimic the bank's number). This person was also a scammer.

The scammer told Mr and Mrs S there had been two more attempts to take money from their account, and that two different employees from their local branch were suspected of attempting fraud on their account. The scammer explained that the employees had been able to attempt to take money from their account as they'd been able to fraudulently order replacement debit cards in Mr and Mrs S's names.

Mr and Mrs S have told us that the scammers called them repeatedly that day, telling them that in order to protect their money, they should transfer all their savings account funds into a 'safe account' the next day. They were told this money would be returned to their savings account by 21 December.

Mrs S says that at one stage she was wary and so the scammer offered to speak with someone else. Mrs S gave the scammer her brother's telephone number and the scammer ended up speaking to her brother twice. Her brother first took an incoming call from the scammer, and then called the scammer back on what he believed to be a NatWest number. He was satisfied that what the scammer had said was genuine, and this also reassured Mr and Mrs S – so they agreed to move their savings account funds into a safe account.

The next day Mr and Mrs S said the scammer called several times again. He told Mrs S that two new accounts had been opened in their names. He told them to visit their local branch and transfer their savings into two different safe accounts which were held at two different banks. The scammer told Mr and Mrs S to keep him 'on line the line' (on Mr S's mobile) while they were in branch, keeping the phone out of sight given the branch staff were

suspects. The scammer told Mr and Mrs S that if they were asked any questions by branch staff they should say as little as possible.

When Mr and Mrs S arrived in branch and requested the transfers, they say they were told they could only transfer a maximum of £20,000 a day. Because of this one payment of £20,000 was made immediately, and another payment of £20,000 was processed to go through in the early hours of 21 December (Mr and Mrs S planned to send the rest of their savings to the scammer over the next few days). Mr and Mrs S have said the payment transfers were authorised by the bank manager, and that they were asked whether they'd paid into one of the recipient banks before. They remember replying that they had, but a long time ago.

Mr and Mrs S don't really remember what they told the bank the payments were for - they think they might have said they were payments towards something like a car - but they aren't sure anymore. Mr and Mrs S also don't remember the scammer giving them a cover story; they think they just made up a reason for the payments on the spot, mindful the scammer was listening to what they were saying because they had kept him on the line via Mr S's mobile phone, which was out of sight in Mr S's pocket.

Mrs S has told us she woke up at 5am on 21 December, and it dawned on her that they had been scammed. Mr and Mrs S told NatWest's fraud team what had happened that day. NatWest investigated their claim and it managed to recover £354.87 from one of the recipient banks but it said it couldn't do anymore to get their money back.

So, Mr and Mrs S referred their complaint to us. They told us they've banked with NatWest for 40 years, and they feel NatWest staff should've done more to prevent them being victims of a scam - particularly as they'd never transferred such big sums of money before.

our investigation

When we asked NatWest for its file on the complaint, it said it had a robust fraud monitoring system in place which it updates daily to keep on top of fraud trends. It said that because Mr and Mrs S authorised the payments it couldn't be responsible for their loss, and it couldn't be held liable for the actions Mr and Mrs S had taken following what they were told by the scammer.

It also explained that it had obtained a statement from the member of staff (some time later, in June 2018) who had provided a detailed sequence of events, including information to suggest a [REDACTED] was completed. It said this showed the branch had acted with due care and diligence.

Among other things, the branch staff member says they remember Mr and Mrs S clearly and:

- *'I spent some time chatting to them about the payments. They wanted me to send the money to their other accounts. They said they wanted to spread their funds around so as not to hold such a large amount with NatWest.'*
- *'I advised that they could write cheques and take them to their other banks, but they insisted I send by faster payment. They also wanted to send both payments the same day which I advised couldn't be completed due to the limit of £20k per day. I*

arranged for one payment to go straight away, and the other I would schedule for the following working day without them visiting the branch for a second time.'

- *'I completed the [REDACTED] for the whole amount of £40k, and spent time asking them about the transactions and what the money was being sent for, and if there was any other way to send the funds. My manager [name] authorised the payments along with the [REDACTED], he too asked Mr and Mrs S about the payments.'*

One of our investigators looked into Mr and Mrs S's complaint and came to the view it should be upheld. She thought NatWest didn't do enough to uncover whether Mr and Mrs S were affected by a scam. The investigator believed that NatWest could've prevented Mr and Mrs S from losing their money – and had it done so, Mr and Mrs S wouldn't have been so badly impacted by what happened. Because of this she felt NatWest should refund Mr and Mrs S what they'd lost financially, and she thought it should also pay them £300 for the distress and inconvenience they'd experienced.

NatWest hasn't accepted the investigator's opinion so the complaint has been passed to me for a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusions as the investigator, for broadly the same reasons.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story:

- The law recognises that a bank may be liable to its customer if it makes a payment in circumstances where it has reasonable grounds (although not necessarily proof) for believing that the payment instruction was an attempt to misappropriate the funds of its customer (known as 'the Quincecare duty').
- Regulated firms like NatWest are also required to conduct their '*business with due skill, care and diligence*' (FCA Principle for Businesses 2) and to '*pay due regard to the interests of its customers*' (Principle 6).

And as a matter of good industry practice at the time, I consider firms should also have taken proactive steps to:

- identify and assist vulnerable consumers and consumers in vulnerable circumstances, including those at risk of financial exploitation (something recognised

by the FCA in recent years and by the British Bankers Association's February 2016 report *'improving outcomes for customer's in vulnerable circumstances'*);

- look to identify and help prevent transactions - particularly unusual or out of character transactions – that could involve fraud or be the result of a scam (something also recognised by the British Standards Institute's October 2017 *'Protecting Customers from Financial harm as a result of fraud or financial abuse – Code of Practice'*, which a number of banks and trade associations, including NatWest were involved in the development of); and
- in relation to branch transactions – follow the Banking Protocol when available.

This means that there are circumstances, irrespective of the payment channel used, where a bank should, in my opinion, fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

This is particularly so in light of the environment created by the increase in sophisticated fraud and scams in recent years - which banks are generally more familiar with than the average customer.

In this case, I need to decide whether NatWest acted fairly and reasonably in its dealings with Mr and Mrs S when they transferred £40,000 to a scammer, in two separate payments, or whether it should have done more than it did.

Of particular relevance in this complaint is the Banking Protocol, so I have set out more information about that below. But I note the BSI code also contains similar recommendations to detect and prevent fraud.

The Banking Protocol

The Banking Protocol is a multi-agency initiative between the Police, financial sector organisations (including banks, building societies and the post office), and Trading Standards *'aimed at identifying customers who are in the process of being defrauded and implementing safeguarding procedures to prevent their repeat victimisation and further loss of funds.'* It has been fully in force since March 2018, and it's been in force in the branch where Mr and Mrs S transferred £40,000 to a scammer since May 2017.

In broad terms, according to UK Finance's toolkit, financial businesses commit to:

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED] immediately. The Police will then come to the branch and speak to the customer.

It also sets out that bank staff are encouraged to contact the Police even if they aren't sure the customer is a victim of fraud. For example, UK Finance's Bank Colleague FAQ's says:

[REDACTED]

[REDACTED]

Did NatWest act fairly and reasonably in Mr and Mrs S's case?

As I've explained, I consider that as a matter of good practice NatWest should have been on the look-out for unusual and out of character transactions. I'm satisfied the request Mr and Mrs S made - to transfer two large amounts of money out of their savings account on the same day, to accounts they'd not previously made transfers to before - was out of character and unusual for them.

I say this because Mr and Mrs S hadn't made any transfers out of their savings account for six months prior to the scam. In fact, Mr and Mrs S say they've never transferred such large sums of money from their savings account before. I haven't seen statements that show what their account activity was before May 2017, but in any event, I still consider two such large transfers out of their savings account in a six-month period, where they hadn't made any other transfer to be unusual and out of character for them. And I think NatWest ought to have considered this to be the case as well.

In addition to the out of character and unusual transactions that Mr and Mrs S made, I think there were other circumstances which meant that Mr and Mrs S could potentially have been at risk of financial harm, and meant NatWest should fairly and reasonably have implemented the Banking Protocol.

In particular, Mr and Mrs S were in their early seventies at the time of the scam. I consider their individual circumstances to be relevant factors in this particular case. This age profile is one that is disproportionately targeted by scammers. This is recognised by the Banking Protocol and the BBA's report '*improving outcomes for customers in vulnerable circumstances*'.

I'm satisfied NatWest branch staff ought reasonably to have kept this in their mind at the time Mr and Mrs S attempted to transfer large amounts of money from their savings account, (though it's important to note that branch staff should be on the lookout for *any* unusual or out of character transaction – whether a customer is vulnerable or not).

It's seems to me the branch staff may have recognised the transactions were unusual and out of character, and that Mr and Mrs S might be at risk of financial harm, because it has told

us its branch staff completed an [REDACTED] form with Mr and Mrs S before the payment was completed and the branch staff member recalls asking them about the transactions.

I understand the purpose of the [REDACTED] form is to ask a customer a series of questions to ascertain whether a transaction is genuine or might be the result of a suspected scam. NatWest doesn't have a copy of the form that was used in this case, but it has sent us an example of an [REDACTED] form that it says was used at the time.

The form asks whether the customer is present, requires the account details, the amount of the transaction, the type of transaction required and whether the customer is known. It also shows that a customer is asked the following questions:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I can't say for certain whether the [REDACTED] was completed in this case – NatWest hasn't been able to provide a copy and Mr and Mrs S only clearly recall being asked whether they had transferred money to one of the recipient banks in the past. So, I've considered the possibility the [REDACTED] wasn't completed on this occasion.

But even if I accept that it was, given the Banking Protocol sets out that branch staff should ask discreet questions as to the nature and purpose of the transaction (when a transaction is deemed unusual and out of character), and should keep in mind that customers may have been given a cover story, I've thought about whether, in these particular circumstances, NatWest did enough by completing the [REDACTED] with Mr and Mrs S, or whether additional questions should've been asked. So I've looked closely at the questions on the [REDACTED].

While there was a closed question about safe account scams [REDACTED]

[REDACTED] I think NatWest ought fairly and reasonably to have recognised there was a risk that this might not have been enough to 'break the spell'. In my view customers such as Mr and Mrs S could, quite understandably, be reluctant to confirm this question if they believe the bank to be involved in fraudulent activity (as I'm satisfied they believed to be the case at this point).

The Banking Protocol recognises that:

- often the bank will have to ask more detailed and specific questions to determine whether the customer might be a victim of fraud; and
- that customers are often convinced by the fraudster's story and so ultimately it may be necessary escalate the matter to the Police for customers to realise or accept that they are the victim of fraud.

And in all the circumstances of this case, I think NatWest should fairly and reasonably have asked more questions about the details of the transactions before completing the transaction.

Mr and Mrs S do not recall being asked further questions, but the branch staff member's statement made six months after the transaction suggests he and the branch manager may have asked further questions.

The staff member says he remembers Mr and Mrs S coming into the branch quite clearly, and that he spent some time chatting to them. He remembers Mr and Mrs S told him they wanted to send some of their money to their other accounts elsewhere, because they felt they held too much with NatWest. Whilst I can't be sure, I think it is more likely than not that this was reason Mr and Mrs S gave as to why they wished to make the payments.

In his statement, the staff member also recalls advising Mr and Mrs S that they could '*write cheques and take them to their other banks*' in order to make the payments. But he remembers Mr and Mrs S insisted on transferring the money by Faster Payments. Based on what this member of staff recalls, it seems as though it's likely further questions, or at least a further conversation took place outside of what was asked on the MCPC. But I don't think what Mr and Mrs S told branch staff, during this conversation, ought to have provided reassurance that they weren't at risk of financial harm, and, if anything, it might even have given the branch staff greater reason to be concerned about the possibility of fraud and to continue with the Banking Protocol (even if those concerns later proved to be unfounded).

I say this because while I accept the reason for the transfer – to essentially spread their money more widely across different banks - isn't an implausible one, Mr and Mrs S were moving over half their savings away from NatWest (after what they say had been 40 years), into other accounts at different banks. And they appeared to want to do so urgently – denying the option to make the payments by cheque and insisting on using the Faster Payments process. I think that branch staff ought fairly and reasonably to have asked more questions here as I think there were indicators that Mr and Mrs S might be at risk of financial harm.

I think NatWest staff ought to have had some suspicions that Mr and Mrs S might have been using a cover story - moving money to other accounts in their names ought to have, in my view concerned NatWest that there was a possibility Mr and Mrs S might be the victims of a safe account scam. And coupled with this, NatWest staff also should reasonably have recognised that scammers often put time pressures on their victims, which might've explained why Mr and Mrs S wanted to move their money as quickly as possible. On top of all of this, NatWest branch staff ought to have kept in mind that these were already unusual and out of character transactions, and that Mr and Mrs S were already particularly susceptible to being scammed because of their age.

So taking all of this into account, I think NatWest branch staff should have fairly and reasonably asked further questions here, rather than accept at face value what they were told about the reasons for the transfers.

For example, NatWest could've asked Mr and Mrs S for further information about the recipient accounts – including, such things as what type of account they were moving the money to (that is the savings account product name), whether they would be getting a better interest rate at the other banks and what that rate was (given they were moving money from their savings account), or why the transfer of funds was so urgent. And, depending on the answers received, it might also have been appropriate to ask for some evidence to link Mr and Mrs S with the recipient accounts. They also could've brought to life what a safe account scam involves given there were indicators Mr and Mrs S might be the victims of this type of scam. I'm not persuaded from the evidence presented in this case that it's more likely than not that the staff member and branch manager did these things.

I do accept, of course, that there is a balance to strike. I'm not suggesting Mr and Mrs S should have been subjected to an interrogation by the branch staff. But I am persuaded the onus was on the branch to reasonably satisfy themselves that Mr and Mrs S weren't about to become the victim of a sophisticated and cruel scam. In this case, for all the reasons I've explained, I think staff ought fairly and reasonably to have had concerns and suspicions based on the circumstances of the transactions. And I think they should have asked further probing questions than they did.

Had NatWest branch staff taken the time to ask further questions, and tell Mr and Mrs S a bit more about scams in a more bespoke and tailored way, I'm not persuaded Mr and Mrs S would have continued to be able to give plausible answers, and I think the 'cover story' that they'd either made up on the spot, or been given by the scammer, would more likely than not to have started to unravel very quickly. It seems to me that if Mr and Mrs S did make up this reason on the spot, they'd struggle to continue to give plausible answers to further questioning. And if the scammer had given them a cover story, I'm not persuaded it was detailed in any way given Mr and Mrs S don't even remember it.

Had the story unravelled in the way I've decided it more likely than not would've, I'm persuaded the scam would have come to light. Whether this would have been through further questioning from the cashier, the manager or even a police officer is unknown, but ultimately, I don't think Mr and Mrs S would've gone ahead and transferred £40,000 to a scammer.

I've thought carefully about NatWest's comments that it can't be held liable for the actions Mr and Mrs S took following a phone call from someone claiming to be from the bank. But I'm persuaded Mr and Mrs S were under the spell of a scammer; even Mrs S's brother fell for it. In my view they were carefully manipulated into thinking their money was at risk. And I don't think Mr and Mrs S's actions, while they were under the spell of a scam, means that NatWest shouldn't have done more to protect them, or that they shouldn't now be compensated.

Overall, I'm satisfied that had NatWest taken the steps I think it ought fairly and reasonably to have taken, the scam would've been prevented. It follows that I'm satisfied neither of the transactions would've taken place, and Mr and Mrs S wouldn't have lost the money that they have.

Finally, I've considered whether NatWest should pay Mr and Mrs S compensation for the distress and inconvenience they've experienced as a result of NatWest's actions. In considering what's fair compensation, I've specifically thought about the impact of NatWest's actions, rather than the impact of the crime itself and I've also taken into account that much of the distress and inconvenience Mr and Mrs S have experienced was ultimately the result of the actions of a cruel scammer.

I'm persuaded that NatWest's failure to act, and prevent financial harm, has had a lasting effect on Mr and Mrs S. They've explained they suffered from ill-health as a result of the scam, they've felt stressed and are now wary when they answer the phone. They've also changed their mobile phone and telephone numbers. I believe some of these feelings, and the fact Mr and Mrs S have changed their mobile phone and telephone numbers likely would've been the case even if NatWest had prevented them from losing their money. This is because I believe Mr and Mrs S would still have felt vulnerable, shaken, and susceptible to being scammed in the future. But I'm persuaded some of the emotional impact, ill-health and wariness they've felt since could've been avoided. So, for these reasons, I think NatWest should pay Mr and Mrs S £300 in compensation.

my final decision

For the reasons I've set out above, I uphold Mr and Mrs S's complaint against National Westminster Bank Plc. I'm not persuaded it was fair or reasonable for it not to refund the losses Mr and Mrs S suffered as a result of the scam.

I require National Westminster Bank Plc to:

- Refund Mr and Mrs S £39,645.13 (this takes into account the amount NatWest recovered)
- Pay interest on the amount at the account interest rate, from the date of the payments to the date of settlement.
- Pay Mr and Mrs S £300 for the material distress and inconvenience they experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 14 December 2019.

Katie Doran
ombudsman