

## complaint

Mr W complains that National Westminster Bank Plc should have done more to stop him losing money to a scam.

## background

The detailed background to this complaint is well known to both parties, so I'll provide only an overview of the key facts here.

In August 2015, Mr W received an email purporting to be from a barrister in Malaysia. The barrister explained he had a client that had passed away and that the client's relatives had been on board the missing Malaysian Airlines flight MH370 and were presumed deceased. The barrister suggested his client's assets, worth \$15.5 million USD, would now be confiscated. The barrister proposed that Mr W should present himself as the next of kin and beneficiary as he shared the same last name as the late client. The barrister proposed that they could then share the proceeds between them.

The barrister explained that he knew *"all of the loop holes [sic] involved and will handle them with great professionalism."* He said he would provide all of the necessary legal documents. Mr W says the emails and documents the fraudster sent to him looked genuine and *"in good order."* Mr W was told that he needed to pay taxes and other legal fees, but once the claim had been processed, he would receive a large sum of money. Mr W has told us that at this time, he was going through a divorce and had debts. He thought this was a way out of a difficult financial situation.

Unfortunately, Mr W was in contact with a fraudster. Between 11 August 2015 and 15 March 2016, Mr W made six online international payments to the fraudster, amounting to over £71,000. In May 2016, Mr W had doubts about the situation and raised a scam claim with the bank. The bank tried to recover the funds he'd sent but was unsuccessful.

Mr W was contacted by the fraudster again. Mr W explains that he continued to make payments because the individual he was in contact with insisted he was a barrister. As such, Mr W considered him to be a genuine individual and not trying to scam him.

Mr W explains that he wrote to the Malaysian Embassy in London to check the barrister's credentials but did not receive a reply. Mr W also says that he challenged the individual due to the amount of money he'd already transferred, but his response *"indicated all was above board and nothing fraudulent."* Mr W recalls that the individual raised concerns over why he didn't believe him and sent him a copy of his identity card. Mr W says that at this point, he didn't doubt him and saw no reason not to continue with payments.

Mr W made a further 13 online international payments, amounting to almost £42,000 between 13 July 2016 and 5 February 2019.

Mr W has told us he'd lost £80,000 from his savings and pension and borrowed a further £65,000 in credit and from family to make payments to the fraudster. He explains that he sent some money to the fraudster using a money transfer service but suggests most of the payments were made from NatWest. In this complaint, I am only considering the transactions I have previously referred to, which total approximately £113,000. I am not considering any other payments Mr W made.

On 7 February 2019, Mr W was in contact with the bank and explained he'd lost £175,000 in total as a result of the scam. NatWest says it asks Mr W to state clearly what transactions he was disputing. The bank raised a scam claim to see whether it could recover any funds on 11 February 2019 when Mr W called it back with further details.

Mr W also raised a complaint. He was concerned that the bank's fraud prevention measures did not flag any of the transfers and felt the bank should have done more to protect him. He asked the bank if it could assist with the repayment of the loans he'd taken out to pay the fraudster.

NatWest issued its final response on 25 April 2019. It said there was nothing further the bank could do. It suggested Mr W should contact the bank's financial difficulties team to discuss the best course of action in relation to debt management.

Unhappy with the bank's response, Mr W complained to us. He said the bank's final response was based on assumptions that he understood his actions. He pointed out that he raised a scam case in 2015 and then recommenced making payments the following year. He thinks the bank should have done more to clarify why he had restarted transferring money and checked that he understood his actions. He explained that he'd had a difficult time personally, losing his mother in December 2016 and his father less than a year later. He thought it was possible this had impacted his thought processes.

Initially our investigator raised concerns that the payments Mr W made were large and out of character. He suggested NatWest should have looked into things more at the time Mr W was making the payments and that doing so would have uncovered an obvious scam.

NatWest disagreed. It said Mr W had been willing to enter into an arrangement with a third party in circumstances when he knew he had no entitlement to any funds. It felt Mr W's position represented a "*moral hazard*."

Our investigator reviewed his position. He pointed out that the inheritance situation ultimately wasn't real and a fraudster was taking advantage of Mr W. He still thought the bank would have found out the situation was a scam if it had discussed the payments with Mr W. He suggested that Mr W wouldn't have taken out loans with the bank if the scam had been prevented and suggested NatWest should take this into account.

Our investigator then suggested Mr W and NatWest should share some responsibility for what happened. He thought the bank should have done more and identified the payments Mr W was making as suspicious. But he also thought Mr W knew he wasn't related to this person and that this was money he wasn't entitled to. He thought a fair position would be for the bank to refund half of the money Mr W had lost.

He also asked Mr W about his wider financial situation and established that Mr W had now been able to reach repayment plans with his creditors with the assistance of a debt advice charity.

NatWest responded to say that it was concerned about the situation. It said that a reasonable person exercising an average level of skill and care would have recognised that an unsolicited email offering the chance to gain a share of a large foreign inheritance was *“highly suspicious.”* It thought Mr W must have known the scheme was dishonest. It felt the situation was implausible and Mr W’s actions, by engaging and hoping to personally gain from a dishonest act, could not be overlooked. It pointed out that as Mr W was willing to mislead Malaysian authorities, it seems likely he would have chosen to hide his actions from the bank too.

NatWest explained that it had looked closely at the borrowing it had offered Mr W. It explained that it had extended borrowing of approximately £30,000 to Mr W before the scam happened, of which approximately £17,000 remained outstanding. It said across the almost four-year period that the scam took place over, it only gave Mr W four balance transfers from his credit card. It advanced £1,544 in September 2016, £2,000 in March 2018, £500 in June 2018 and £439.52 in October 2018.

Our investigator was persuaded by some of what the bank had said. He explained that he could see no clear link between the lending NatWest had given Mr W in the past and the scam. So he didn’t think it would be fair to ask the bank to write the current outstanding balances off.

He still believed that the bank should have discussed the payments Mr W was making. He felt they were significantly out of character, both before and after Mr W reported the scam. But he did not think the scam would have been stopped even if the bank had acted. He concluded, on balance, that even if the bank had intervened as it should have done, it would not have made a difference and Mr W would have continued to make the payments to the fraudster. He said this because Mr W had continued to make payments despite serious concerns it was a scam. The inheritance hadn’t materialised, but Mr W was prepared to take a risk and continued to send money to the fraudster. He thought that even if NatWest had told him this was a scam, Mr W would likely have continued regardless. In summary, he felt Mr W was under the fraudster’s influence to such a degree there was nothing the bank could have done to prevent his loss.

Mr W was disappointed with the position our investigator ultimately reached. Mr W pointed out NatWest never contacted him, so he considered any actions he may or may not have taken in response to the bank raising concerns to be immaterial and nothing more than speculation. He felt the bank had been negligent and explained that he found it hard to accept that NatWest has no responsibility for the difficult financial situation he now finds himself in.

As no agreement could be reached, the complaint has been referred to me.

## **my findings**

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

I've looked at what I think is the heart of the matter here, being; should NatWest have recognised Mr W's payments as being suspicious and intervened, and if it had done so, would it have made a difference to what happened. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair and reasonable outcome. Our rules allow me to do this. This reflects the informal nature of our service as a free alternative to the courts.

Having considered whether NatWest could, or should, have done more to stop Mr W making the payments he did, I don't think I can fairly or reasonably ask NatWest to take responsibility to refund the money Mr W has lost. I can understand this will be a very disappointing outcome for Mr W so I will explain why.

I accept that Mr W has been the victim of a protracted and cruel scam. It's clear that losing such a large amount of money to the scam has had a significant impact on Mr W's life. He's told us that his lifestyle has changed beyond recognition and it will take him many years to repay the debt he's currently in. I don't underestimate the emotional burden he now carries. But that alone doesn't mean he is entitled to be reimbursed by the bank. That all depends on whether the bank did anything wrong – that is, could it have done any more to prevent the scam from taking place or intervened so that Mr W would have realised what was happening and stopped sending money.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that its customer authorises it to make. Mr W used his security credentials to set up and request the payments. This means that at the time he sent the money, he authorised the payments and wanted them to be made. Although he did not intend for the money to go to a fraudster, under the Payment Services Regulations 2009 and the Payment Services Regulations 2017 which apply to the payments he made, and the general terms and conditions of bank accounts, Mr W is presumed liable for the loss in the first instance.

But, taking into account the law, regulators rules and guidance, any relevant codes of practice and what I consider to have been good industry practice at the relevant times, I consider NatWest should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

NatWest should have been on the lookout for unusual and out of character transactions. Looking at the way Mr W's accounts typically ran, when he began making payments to the fraudster those payments did stand out. He was sending money internationally which is not something he would normally do. The payments grew larger in size and were increasing in frequency. So I think the spending on the account initially should have prompted NatWest to get in touch with Mr W to question the payments he was making. There were indicators that Mr W might have been at risk of financial harm. I'm also mindful that a bank should seek to prevent its bank accounts from being used to further financial crime and Mr W was making large payments internationally to various accounts in Malaysia without being questioned.

I've also thought about the payments Mr W made after he'd become aware that the situation was a scam. These payments were for similar amounts of money to what Mr W had paid previously and they were being sent to accounts in the same country as before. At this time, NatWest was fully aware that Mr W had made a scam report, so there were indications that could have given NatWest cause for concern that Mr W might still have been at risk of financial harm. But I am also mindful that there were often gaps of up to eight months in between some of the further payments to the fraudster, which can make it more difficult for a bank to spot emerging spending patterns which are clearly indicative of financial harm.

I acknowledge there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. But having thought about everything in the circumstances of this particular case, I consider NatWest ought reasonably to have intervened to explore the payments Mr W was making- both when he first started to make them and when he recommenced payments after he'd told the bank he'd been sending money in connection with a scam.

Although I consider NatWest ought to have intervened, this in and of itself isn't enough for me to say that NatWest should refund some or all of the money Mr W has lost. I also need to be persuaded that its intervention would have made a significant difference and ultimately prevented the payments from being made. Mr W has said it is speculation to say what may have happened. But when making my decision, I have to base my findings on the balance of probability – that is, what I think is more likely to have happened, taking into account what I know from the information that is available to me.

I've thought about whether interaction with NatWest would have uncovered the underlying situation or broken the 'spell' of the scam for Mr W. And, on balance, I'm not persuaded interaction with the bank would have been enough to stop Mr W from sending the money, even if the bank had been able to identify that Mr W was making payments that were most likely part of a scam.

Mr W has reflected on the scam and said:

*"At the time I believed in what I was doing and kept going and thought it was in the best interest for me and my family."*

So even if Mr W had told the bank the full picture, and the bank had voiced its concerns about the payments he wanted to make, or even blocked the payments, I don't think that would have been enough to ultimately deter him from the temptation of the scam. In saying this, I am mindful that Mr W's overall losses to the fraudster encompass more than the transactions that are currently in dispute as part of this complaint. He's told us that he also made payments using a money transfer service.

By making other payments, it seems more likely than not to me that Mr W would have found an alternative way to send money to the fraudster even if NatWest had prevented him from doing so. At the time, these were payments Mr W wanted to make.

I'm also mindful that Mr W restarted making payments to the fraudster after reporting the payments he'd already made as being connected to a scam. When Mr W proceeded making payments, he'd had the opportunity to reflect on the situation he was in and he was well aware it was a scam. He understood something was amiss, but he still wanted to take the risk that the situation might ultimately turn out to be legitimate - even though there were warning signs that the arrangement was not credible or above board. Mr W has told us that he borrowed money from family and withdrew money from his pension pot to make payments to the fraudster, which I think demonstrates his commitment to the scam and the importance he placed on making the payments requested. I don't think it would be fair and reasonable to place responsibility for the consequences that flow from that decision on the bank in these particular circumstances.

When Mr W referred his complaint to this service, he said:

*"Yes, I am a responsible [sic] for accepting this very appealing scam but all looked very genuine when presented with the various documents"*

Mr W does recognise that his actions have contributed to the difficult situation he now finds himself in. I have concerns about how readily Mr W willingly handed over a considerable amount of money to the fraudster based on the plausibility of what he was being told. It was not reasonable for Mr W to think he had a legitimate entitlement to funds in the circumstances the fraudster described. I am also not persuaded Mr W should have taken confidence from the documentation he was sent, and I have concerns particularly about the ongoing correspondence purporting to be from the international bank. The correspondence stands out as not striking the professional tone reasonably expected of a dialogue between a multinational investment bank and a client:

*"You must understand that i am not here to play fool ok, if you don't wanna take my instruction i will better stop contacting you ok. I have enough money to live and comfortably. I hate if someone try to help other instead he or she will be appreciated but he will be disappoint inself in future." [sic]*

In addition to this, at points Mr W did identify that the situation did not feel right, such as when he first reported the scam because the promised inheritance had not materialised. But sadly, the lure and appeal of the scam was just too strong for him to resist.

Mr W has my considerable sympathy. Fraudsters are masterful at playing on a victim's emotions to obtain what they want and he's lost a life changing amount of money as a result. But in all the circumstances of the complaint, I don't think it would be fair and reasonable to find the bank missed the opportunity to stop what ultimately unfolded. I think, on balance, Mr W would have made the payments regardless and against his own better judgment. It follows that I'm not asking the bank to reimburse the transactions I have considered, and I make no award against it.

**my final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 July 2021.

Claire Marsh  
**ombudsman**