

## **The complaint**

Miss A complains that National Westminster Bank Plc won't refund the money she lost when she was the victim of what she feels was a scam.

## **What happened**

Miss A has complained about a number of payments made out of her NatWest account between 2013 and 2016. She's said a tradesman who was doing some work for her began occupying her property without her permission. They then forced or coerced her to make the payments in order to pay for a number of things, including their travel expenses, legal costs and day-to-day living. And this continued until 2017, when Miss A had the tradesman forcibly removed from her property.

NatWest investigated but said to was unable to prevent the payments if Miss A had instructed them, and that it felt these circumstances would be classed as a civil dispute – rather than a scam. So it didn't agree to refund the payments Miss A had made. Miss A wasn't satisfied with NatWest's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought the evidence suggested this was a civil dispute between Miss A and the tradesman, so didn't think NatWest should have to refund the payments. Miss A disagreed with our investigator, so the complaint has been passed to me.

## **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.

Having done so, I don't think it would be fair to require NatWest to refund the payments Miss A made. I'll explain why below.

Banks are expected to make payments in line with their customers' instructions. And Miss A accepts she made the payments here. So while I recognise she feels she has been scammed by the tradesman, she did authorise the payments. And so the starting position in law is that NatWest was obliged to follow her instructions and make the payments. So Miss A isn't automatically entitled to a refund.

There are certain activities banks are expected to carry out to try to protect their customers from falling victim to scams, and certain protections in place for customers who do fall victim to scams. But, before looking at whether NatWest has done what we'd expect it to do or whether these protections apply, I must first be satisfied that Miss A has been the victim of a scam.

The relevant test for whether someone has been the victim of a scam comes from the FCA handbook. This defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where

the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

So in order to determine whether NatWest should refund the payments Miss A made, I first need to consider whether she has been the victim of a scam – or, in other words, whether she was deceived about the purpose of the payments to the point where she and the tradesman intended different purposes for the payments and the tradesman set out from the beginning with the intent to defraud her.

I've thought very carefully about this, and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

From what Miss A has sent us, there doesn't appear to be any suggestion that the tradesman used the money she sent him for anything other than the reasons she understood it would be used for. The copies of the communication between her and the tradesman she's sent us show she was told the payments were for a variety of reasons, including travel expenses and day-to-day living costs. And I haven't seen anything to suggest the payments weren't used for these purposes.

Some of Miss A's correspondence with her solicitor also appears to suggest that, at least at some point, the tradesman recognised that they owed her money and was willing to co-operate to return it to her. And I wouldn't expect this kind of acknowledgement from someone who always intended to scam her out of her money.

So I don't think I can safely say the circumstances here meet the high legal threshold and burden of proof for fraud. I don't think the evidence I've seen suggests the tradesman deceived Miss A about the purpose of the payments or set out from the beginning with the intent to defraud her. I think both Miss A and the tradesman's intentions for the payments were the same – to pay for the tradesman's costs and expenses. So I don't think the circumstances here meet the definition of a scam from the FCA handbook.

And so I don't think the protections in place for victims of scams apply here, or that it would be fair to require NatWest to refund the payments Miss A made.

I sympathise with the position Miss A has found herself in, and I'm in no way saying she did anything wrong or that she doesn't have a legitimate grievance against the tradesman. But I can only look at NatWest's responsibilities here and, for the reasons I've explained above, I don't think it would be fair to hold NatWest responsible for the money she lost.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 25 October 2024.

Alan Millward  
**Ombudsman**

