

The complaint

Mr C complains that National Westminster Bank Plc (NatWest) won't refund payments he says he made as part of a scam. He's also unhappy with how NatWest has supported him regarding compulsive gambling.

What happened

Mr C holds a current account with NatWest. Between 30 November 2023 and 4 January 2024 Mr C made over 100 payments to a gambling company's website by faster payment through open banking. The payments totalled over £9,000.

Mr C believed he had winnings held in his gambling account of around £11,000, but when he tried to withdraw these winnings, he was unable to do so. Ultimately, his gambling account was blocked, and he received no response when he tried to contact the gambling company. On investigating further Mr C came across numerous reviews of the company which suggested other people had experienced similar issues with withdrawing their winnings.

On 4 January 2024 Mr C reported to NatWest that he believed he'd been scammed. NatWest contacted the receiving bank to see if they could recover any of Mr C's funds, but were only able to recover £900. NatWest also considered whether it was obliged to refund any more of Mr C's loss, but did not think it was. It said that the company Mr C had paid was a legitimate business, and so this would not be considered as a scam. In addition, NatWest said that Mr C had ignored warnings it had given him about payments he was making had not carried out reasonable checks on the gambling company before making payments, and had continued to make payments when he had already been unable to withdraw his winnings.

Mr C had also raised concerns with NatWest about how it had handled his compulsive gambling, he felt that NatWest should have stepped in to protect him. NatWest said it had been unaware of Mr C's compulsive gambling until after the payments that are the subject of this complaint, and felt that, when he had told it of his issues with gambling, it had provided appropriate support. NatWest did though pay Mr C £100 to recognise that some of the service he received when raising his concerns could have been better.

Mr C was unhappy with this response and so referred his complaint to our service.

Our investigator looked into Mr C's complaint, but he didn't uphold it – he didn't think there was enough evidence to say that the gambling company was operating a scam. He also didn't consider that NatWest had done anything wrong regarding Mr C's compulsive gambling, and felt that the compensation NatWest had paid for poor service was appropriate in the circumstances.

Mr C disagreed, and asked for an ombudsman to review his complaint. He said, in summary, that there was evidence to show that the gambling company was not properly licensed, that it had since ceased operating, and that he felt the weight of evidence showed that this was a scam. Mr C also noted that he had a card block on gambling transactions on his NatWest account.

As no agreement could be reached, this case has now been passed to me to review.

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 appreciate the very significant impact the loss of this money has had on Mr C, and I know this outcome won't be what he'd hoped for - but I'm not upholding his complaint. I'll explain why.

It's not in dispute that Mr C authorised the disputed payments. And 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 the Lending Standards Board's Contingent Reimbursement Model (CRM) 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.

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 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.*

The CRM Code is also quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) This code does not apply to:

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."

I've thought very carefully about what NatWest and Mr C have said here, and it is clear that this is an extremely complex situation. Mr C maintains that the evidence suggests the gambling company was not a legitimate business, he says it was operating as a fraud.

However, with everything I have seen, I don't think I can fairly say that the payments Mr C made here could be considered to meet the definition of an APP scam, I think it is more likely that this is a civil dispute between Mr C and the gambling company.

I can see that there are online reviews of the gambling company which say there have been difficulties withdrawing funds. But there are also positive reviews of the company. I also acknowledge that the gambling company may have been acting unprofessionally, or unethically, and that there are some questions around what gaming licence it had, if any. I can also see that this specific gambling company was one that had been identified online as bypassing some of the ways we have in the UK to prevent problem gambling – such as Gamstop. It is certainly possible that the company may have been acting fraudulently, but equally it may simply have been operating unprofessionally or unethically, given that it was not licensed in the UK. And there may be various legitimate reasons why a gambling company might refuse to pay out winnings or otherwise block an account. The evidence available is simply not strong enough for me to say that this company set out to intentionally defraud Mr C.

It also appears that on the face of it, Mr C paid for a service he received. I've not seen sufficient evidence to show that Mr C was unable to use the service the company provided. Essentially, the payments Mr C made were so he could place bets or otherwise gamble, and given that he says he had significant winnings in his account, and continued to make the payments over an extended period of time, it would appear that he was able to carry out gambling transactions. So, in essence, Mr C did receive the service he had paid for.

I also think it is worth noting here that Mr C made many individual payments to the gambling company, and we have no evidence to show which of those individual payments might have led to a 'winning' bet or which might have been losses. It would therefore be extremely difficult to fairly say that any individual payment could be considered as a scam loss rather than simply a failed bet. And, of course, it would not be fair to say that NatWest should be held financially liable for Mr C's gambling losses.

With all of this in mind I don't think I can fairly say these payments would meet the definition of an APP scam as set out above, or that it would be fair to refund them to Mr C under the Code.

Mr C has said NatWest should have taken steps to intervene in the payments he was making, but I don't agree that is the case. NatWest needs to balance any intervention with allowing the day to day running of the account. And the payments weren't of a value where NatWest ought to have been concerned about a heightened risk of financial harm to Mr C. They were also apparently made via an intermediary payment processor, so I don't think it would have been immediately obvious to NatWest that they were gambling transactions.

NatWest would consider a range of factors when deciding whether to intervene, but it wouldn't be reasonable to expect it to monitor every transaction Mr C made. And, in any case, I can't see that NatWest was aware that Mr C had problems with compulsive gambling until after the payments that are the subject of this complaint. On being told of the issues Mr C had, NatWest took steps to provide appropriate advice, so I am satisfied it has met its obligations to Mr C regarding this issue. Mr C has said he had a card block in place to prevent gambling payments, but that would only prevent card payments to merchants identified as gambling – and Mr C's payments weren't made by card. With all this in mind, I don't think NatWest ought to have done anything to block these payments.

Finally, I can see that there were some issues with the service Mr C received when he contacted NatWest about this issue. But NatWest has paid Mr C £100 to recognise the

impact of those issues, and I'm satisfied that is reasonable compensation in the circumstances of this complaint.

I'm sorry to disappoint Mr C, but with everything I've seen I don't think I can fairly say that it would be reasonable to hold NatWest liable for his loss here, so I won't be asking it to refund that loss to him.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 February 2025.

Sophie Mitchell
Ombudsman