

The complaint

Mrs W complains that National Westminster Bank Plc (NatWest) is refusing to refund her the amount she lost as the result of a scam.

Mrs W is being represented by a third party. To keep things simple, I will refer to Mrs W throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mrs W was called by a scammer (X). X claimed to be calling from the fraud department at NatWest and explained that Mrs W's account had been compromised. X knew personal information about Mrs W such as her name, contact information and transactions that had been made on her account.

X was able to make a payment from her account to a well-known retailer which Mrs W could see leaving her account. X claimed this was a fraudulent transaction.

X also sent Mrs W a text message which appeared in an existing NatWest message thread.

X explained to Mrs W that freezing her account would not be an effective way of protecting her funds from the scam and the funds would need to be moved to a secure banking app. X said the funds would have to be moved in small payments, so they were not flagged to the scammer.

To help with the process of protecting her funds X told Mrs W to download the remote access software AnyDesk so he could guide her. X persuaded Mrs W that she would need to open new accounts with World Remit and Kroo.

Mrs W tells us X then made payments from her account to her existing Starling account, World Remit and Kroo.

X then made payments from Mrs W's Starling account to other retailers advising Mrs W that the funds would be safe in those places and that she would receive a refund when she visited a NatWest branch to meet him.

At this point Mrs W started to have concerns and when her husband challenged X, X ended the call and was no longer contactable.

Below is a list of payments made in relation to the scam:

<u>Payment</u>	<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
1	19 December 2023	World Remit Ltd	DPC Third party payment (TPP)	£1,981.99
2	19 December	World Remit	DPC TPP	£2,181.99

	2023	Ltd		
3	19 December 2023	Mrs W (Starling)	DPC (Mobile banking payment)	£1,500.00
4	19 December 2023	World Remit Ltd	DPC TPP	£1,281.99
5	19 December 2023	Mrs W (Starling)	DPC (Mobile banking payment)	£1,242.00
6	19 December 2023	Mrs W (Starling)	DPC (Mobile banking payment)	£2,195.00
7	19 December 2023	Mrs W (Starling)	DPC (Mobile banking payment)	£4,000.00
8	19 December 2023	Mrs W (Kroo)	DPC TPP	£1,980.00
9	19 December 2023	Mrs W (Kroo)	DPC TPP	£2,765.00

The payments made to Kroo were recovered so Mrs W did not incur a loss for these. Mrs W also received partial refunds from Starling for some of the payments that were sent to it.

Our Investigator considered Mrs W's complaint and didn't think it should be upheld. Mrs W disagreed, so this complaint has been passed to me to decide.

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.

It has not been disputed that Mrs W has fallen victim to a cruel scam. The evidence provided by both Mrs W and NatWest sets out what happened. What is in dispute is whether NatWest should refund the money Mrs W lost due to the scam.

Recovering the payments made in relation to the scam

All the payments made in relation to the scam were made via a transfer method. When payments are made by transfer the only option NatWest has to recover them is to contact the operator of the receiving account to request a refund of any remaining funds.

As the payments Mrs W made to Starling and Kroo went to accounts held in her own name, if any funds did remain in these account Mrs W would remain in control of them and therefore, they wouldn't need to be recovered.

Payments made to World Remit were not sent to an account in Mrs W's name. But World Remit has confirmed that when the payments were received, they were sent to another external bank in India so even though NatWest didn't attempt recovery of these payments I'm satisfied any recovery attempt would not have been successful.

Mrs W feels she should receive a refund of the payments made in relation to the scam under the Contingent Reimbursement Model (CRM) Code.

The CRM code only applies when domestic payments (as the result of a scam) are sent to another person. Most of the payments made in relation to the scam went to an account in Mrs W's own name so the CRM code would not apply in that scenario.

However, the payments made to World Remit were not made to an account in Mrs W's name so I have considered whether she should get a refund for these payments under the

CRM code.

Exceptions to the CRM code are listed below:

(a) “The Customer ignored Effective Warnings, given by a Firm by failing to take appropriate action in response to such an Effective Warning given in any of the following:

- i. when setting up a new payee.*
- ii. when amending an existing payee; and/or*
- iii. immediately before making the payment.*

(b) That the Customer made the payment without a reasonable basis for believing that:

- i. the payee was the person the Customer was expecting to pay.*
- ii. the payment was for genuine goods or services; and/or*
- iii. the person or business with whom they transacted was legitimate”*

I have looked at whether NatWest should have intervened later in this decision, overall, I have decided that an intervention was not reasonably expected in the circumstances.

I have also considered the obligations on Mrs W and if she had a “reasonable basis of belief”. From the information provided it’s clear that X used sophisticated scam techniques when persuading Mrs W to part with her funds. But I don’t think the explanation X gave Mrs W was plausible enough as to why she was having to send funds to a third party.

Mrs W didn’t set up the account with World Remit herself and wasn’t given access to it. Instead, payments were made by X having accessed her device via remote access software and no confirmation was provided to Mrs W on how these funds would be accessed.

Overall, I don’t think Mrs W had a reasonable basis for believing the payments going to World Remit were going to a person she was expecting to pay, or that they were legitimate payments.

With the above in mind, I think an exception to reimbursement under the CRM code applies and I don’t think it would be reasonable to ask NatWest to refund the payments covered by it.

Should NatWest have reasonably prevented the payments made in relation to the scam?

While Mrs W didn’t authorise these payments herself, by knowingly giving X the ability to access her account and make payments on her behalf, she gave her apparent authority for the payments to be made. So, we would treat these as authorised payments, and the starting point here is that Mrs W is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether NatWest should have been aware of the scam and intervened when the payments were being made. And if it had intervened, would it have been able to prevent the scam taking place.

The payments made in relation to the scam went to what would have appeared to be legitimate accounts, many of which were in Mrs W’s own name. When payments are made to accounts in the same name as the person sending them, they understandably cause

banks less concern, usually because the funds remain within the control of the person sending the payment and not a third party.

Mrs W had also previously made large value payments higher than those that have been disputed to third parties.

With the above in mind, I don't think the payments would be considered unusual compared to the way Mrs W operated her account, or that they should reasonably have caused NatWest to have concerns that would have prompted it to intervene.

I can see that Mrs W was required to authorise one of the payments to World Remit through her banking app which would have confirmed it was her making the payment and she was happy for it to leave her account. I think this requirement was proportionate to the risk posed by the payment being made.

With the above in mind, I don't think NatWest was responsible for Mrs W's loss.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 24 October 2024.

Terry Woodham
Ombudsman