

The complaint

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

What happened

In early 2019, Mr A wanted to get a loft conversion done at his property and found a builder online. They provided a quote which he agreed to, and so the builder started the work. And Mr A made a number of payments from his NatWest account to account details the builder gave him – to pay for drawings, scaffolding and materials.

Unfortunately, after the seventh payment Mr A made, the builder stopped coming to the property, took down the scaffolding they had put up, and never completed the work. Mr A also says some of the materials he paid for were never delivered and some of the work done was of such poor quality that it had to be torn down before a new builder could complete the work. Mr A reported the payments he had made to the builder to NatWest as a scam and asked it to refund the money he had lost.

NatWest investigated but said it felt this was a civil dispute between Mr A and the builder, rather than a scam. So it didn't agree to refund the payments he had made. Mr A wasn't satisfied with NatWest's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the evidence suggested the builder intended to defraud Mr A from the outset. So they thought this was a civil dispute between him and the builder and didn't think NatWest should have to refund the payments Mr A had made. Mr 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 money Mr A has lost. I'll explain why below.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

NatWest is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

The CRM code 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.

The CRM code also says that it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier.

So in order to determine whether NatWest should refund the money Mr A lost under the CRM code, I need to consider whether he has been the victim of a scam – or, in other words, whether Mr A was deceived about the purpose of the payments to the point where he and the builder intended different purposes for the payments and the builder set out from the beginning with the intent to defraud him.

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.

The builder started work at Mr A's property as agreed. Scaffolding was constructed around the property, and Mr A accepts that some materials were delivered and some work was done – including removal of a ceiling and some brickwork. And, as the payments Mr A made to them were spread over more than a month, the builder appears to have been working at the property in at least some capacity over a significant period of time.

I appreciate that Mr A has sent us a report from a surveyor which says that at least some of the work the builder did was of poor quality, and the value of the work he received was significantly less than the amount of money he paid. But poor quality work does not mean there has been a scam. And the report still shows work was done, and it appears more work was done than I'd expect from someone who never intended to complete the work.

The banks the payments were sent to have both told us they didn't have any concerns about the accounts the payments went into at the time, and only one other scam report was made against the accounts – which was itself deemed a buyer / seller dispute. But scammers usually target a number of people at once, in order to make as much money as possible before the scam is uncovered. So I'd expect to see other scam reports to the same accounts around the same time if the builder was operating a scam. And I think the lack of other reports suggest the builder was at least attempting to operate as a legitimate business at the time.

I've also seen evidence relating to the accounts the payments were made to. And while I can't share specific details of this with Mr A, the accounts appear to have been run for some time as I would expect a legitimate tradesperson's accounts to have been and I don't think the activity on the account suggests they were being used to operate a scam.

Mr A has said some of the payments he made were for an architect to provide plans of the work to be done, but he's since found out the drawings he was shown were for a different property. He's also said the builder told him they had submitted information to comply with building regulations when they hadn't, and asked him to pay later payments to an account in the name of their sister company, which he now thinks isn't connected to them.

But from what I can see, the two companies are connected as they share a number of directors – so it wouldn't necessarily be unreasonable for them to ask for some payments to be made to this other account. And, even though these things suggest the builder misled him

at times and acted unprofessionally, I still think their intention was to do the work that had been agreed and that the payments were made for. So I still think Mr A and the builder's intended purpose for the payments was the same – to carry out the work. And so I don't think this dishonesty and unprofessionalism by the builder meets the definition of a scam from the CRM code.

I appreciate how Mr A feels about this case, and that he has had to pay for another builder to redo and complete the work. But I must make a decision on what I think is most likely to have happened. And while some of the evidence he's sent us could suggest the builder was operating a scam, based on the evidence I've seen, I think it's more likely the builder was attempting to operate as a legitimate business at the time and that other factors ultimately meant the work wasn't completed or wasn't done to the standard Mr A expected. I don't think the builder set out from the beginning with the intent to defraud Mr A, or that he has been the victim of a scam here.

So I don't think the payments Mr A made to the builder are covered under the CRM code, or that NatWest should be required to refund the money he lost.

I sympathise with the position Mr A has found himself in, and I'm in no way saying he did anything wrong or that he doesn't have a legitimate grievance against the builder. I also understand he has said he will find it difficult to pursue the builder directly, as he has not been able to trace him with the contact details he has. But I can only look at NatWest's responsibilities and, for the reasons I've explained above, I don't think it would be fair to hold NatWest responsible for the money he lost.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 March 2024.

Alan Millward
Ombudsman