

The complaint

Mrs H complains about a fraudulent payment made through Nationwide Building Society (NWide).

What happened

Mrs H is represented by her daughter, but I will refer to Mrs H as the complainant here.

What Mrs H says:

Mrs H had a joint current account with NWide with her late husband, who has sadly died. Together, they wanted to help their daughter out by paying for some roofing work on her house. Her daughter had found a local builder on Facebook and through a local recommendation. The quote was for £1,600, of which the deposit of £1,320 was needed for materials. The quote said the balance of £280 was for labour. Mrs H says she took advice from the local Citizens Advice Bureau, and they said if she kept proof of payment and the invoice, she would be covered. On 29 May 2018, Mrs H paid £1,320 from the joint account – as a bill payment.

But then, the builder didn't turn up or do any work.

In October 2018, Mrs H visited their branch of NWide with her late husband and asked about making a claim. Mrs H says they were told a claim couldn't be raised. So, Mrs H (with her daughter) made a claim through the courts, and two County Court Judgements (CCJ) were obtained. One of these said the builder must pay £50 per month, but nothing was paid. Mrs H tried to use bailiffs to get the money back, but without any success. She says the CCJ cannot therefore be enforced. Mrs H says the builder has got away with fraud and she's lost the money.

Mrs H's daughter called NWide in June 2023 and July 2023 – as she wanted to get the money back. She says NWide then told her she could've raised a claim back in 2018. Mrs H complains that if she'd been told that in the first place, there wouldn't have been any need to obtain the CCJs. Therefore, she had the hassle and costs of getting the CCJs – when they weren't needed. The added costs were £907.68 – making a total of £2,227.68. The CCJ was obtained for £2,236.28. And – she said if she had made a claim in 2018, there was every chance she could've got the money refunded back then. **(continued)**

Date	Payment	Amount
29 May 2018	Bill payment in branch	£1,320
	Money claim fees, bailiff fees, interest	£916.28
Total loss		£2,236.28

What NWide said:

In July 2023, NWide said it wouldn't be possible to raise a claim now – as it was a civil matter, and the case had been to court. They apologised that Mrs H was told she could call to raise a claim, this was an error. NWide paid compensation of £175 for the miscommunication.

Our investigation so far:

Mrs H brought her complaint to us. Our investigator didn't uphold it. She said:

- There wasn't any evidence to say this was a scam. The invoice appeared well written and professional.
- Even if NWide had intervened and questioned the payment in the branch when it was made, the payment wasn't unusual given how Mrs H normally used her account.
- The Contingent Reimbursement Model Code (CRM Code) didn't apply as it only came into effect in May 2019.
- Even if NWide had tried to get the money back in October 2018, it was unlikely anything would've remained – as it had been five months since the payment was made.

Mrs H asked that an ombudsman look at her complaint, and so it has come to me to make a final decision.

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.

As a first step, I need to decide whether this was a scam (where a scammer takes money from a customer, or tricks them into making payments with no intention of providing any services or returning the money to them) or a civil dispute (where a payment is made to a legitimate trading company or business, but the promised services or products don't materialise, or are sub-standard).

To give an idea, typical scams are commonly perpetrated by criminals through illegal call centres, for example, scams relating to online banking, or tricking customers into transferring funds to a 'safe account', and romance or investment scams using social media.

If this was a scam – then banks (including NWide) must follow industry and regulatory guidance to check certain payments and in some circumstances, protect customers by stopping the payments and contacting them about them. And where banks haven't followed the guidance, they can be asked to refund them. This is called 'Authorised Push Payments guidance (APP)'.

But where payments are made to a valid business for work to be done, then such principles don't apply. This is then classed as a civil dispute, and for which banks normally have no liability.

I therefore looked at Mrs H's complaint with this in mind. I can see this is clearly a civil dispute between Mrs H and the builder. I say that as I can see there was a quote given, an invoice produced on official paper, and it separated out materials and labour. There seemed to be an intention to do the work. There weren't any warnings about the person concerned online.

So in this case, NWide don't have any duty to refund the money to Mrs H – as it is a matter between Mrs H and the builder to resolve. That was also the case back in October 2018 – when Mrs H visited the NWide branch and was told it wasn't possible to open a claim. So, what she was told then was correct.

So in fact, in 2018 - Mrs H then had no choice but to go through the courts to try to get the money back – which is what she did. So, she did the right thing. It's unfortunate that this hasn't had any success, but it was her only option at that time. NWide didn't have any liability or responsibility to get a refund for the payment.

Looking at what happened when Mrs H's daughter called NWide in June 2023 and July 2023 – and made a complaint. NWide accepted they'd misinformed her, as they said to call the bank to make a claim, which was an error – as it was the case that this couldn't be looked at as a scam - and was a civil matter. NWide's final response does say the matter is a civil one and said that was the case as it had been to court. NWide paid compensation of £175 for the error – which I think was a fair thing to do.

But as I've said – NWide gave the right advice back in 2018.

Mrs H has also said that if NWide had tried to get the money back in 2018, there was a good chance of success – as the builder may still have had the money.

I've considered this. But as NWide then considered the dispute to be a civil claim, NWide didn't have any duty to try to get the money back – as that only applies to where a scam takes place. They could've contacted the builder's bank at that time to ask for the money back – but that would've needed the builder to agree to pay it back – which, given what happened, was very unlikely.

Mrs H's daughter has said her bank has made some refunds where she has made payments by mistake. I can't comment on those – as I don't know the circumstances.

I was sorry to hear of the upset and trauma this has caused. I hope the more recent CCJ (obtained in 2023) proves to be more successful; but as I've explained, NWide don't have any responsibility to refund any money here and didn't have back in 2018. And so, I'm not asking NWide to do anymore here.

(continued)

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 12 March 2024.

Martin Lord
Ombudsman