

The complaint

Ms W complains that Nationwide Building Society says it won't refund the money she transferred to a builder who has failed to complete the agreed work.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, both parties accept that Ms W engaged a builder (who I'll refer to as M) to complete a renovation on Ms W's home. Ms W was advised the work would cost around £80,000.

Work began, and M attended, along with other subcontractors. However, as the build progressed Ms W became aware of a number of issues with the quality of the work both M and the subcontractors were providing. Unable to resolve the issues with the builders herself, Ms W has obtained reports from chartered surveyors and engineers which confirm a significant list of issues with both the building work and damage to the existing property – the chartered surveyor concluding that the workmanship was 'so bad' it would need to be 'removed in its entirety and rebuilt' with an approximate cost of around £110,000 (Ms W having already paid around £79,000 to the M).

Ms W and M have been unable to reach a resolution on how to move forwards – Ms W has said M's responses have varied between insisting on further payments before work is completed, and disputing any wrongdoing at all. Ms W also considers M has acted fraudulently by (among other things) referring to itself as an Architect when, in fact, it isn't, and says that an approved inspector signed notices on her behalf without her knowledge or permission. Ms W also says M and the inspector have failed to comply with Subject Access Requests and Ms W says M has insinuated that if she takes this matter to court, M will be liquidated and she will waste further money on legal costs. She considers M has taken payments from her to both purchase building supplies and pay contractors, and hasn't in fact paid for either.

Ms W has raised her concerns with both Action Fraud and Trading Standards. My understanding is that neither party have so far taken further action against M.

Being left considerably out of pocket and believing she'd been the victim of a scam, Ms W reported the matter to her bank, Nationwide.

Nationwide looked into what had happened but didn't think it was liable to refund Ms W. It didn't think it had been established that Ms W had been the victim of an Authorised Push Payment (APP) scam. Rather it thought this was a private civil dispute between Ms W and M.

Ms W disagreed and so referred the complaint to our service. An investigator considered the complaint. During her investigation, she obtained evidence from various parties, including M's bank, in an attempt to confirm Ms W's concerns that this had been an APP scam. However, she didn't think the evidence pointed towards M having had no intention to carry out the work as agreed. She therefore didn't consider Nationwide was liable to refund the losses Ms W had incurred.

Ms W disagreed with the investigator. She considers that M has 'vandalised' her home more than completed building works and questions how M's actions cannot amount to fraud when

the contract was gained through deception, both in terms of M's credentials and the scope of the work they'd be able to provide.

As Ms W disagreed with the investigator's findings, the complaint has been referred to me for 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.

I'm very sorry to hear of the position Ms W has been left in. She has paid out a considerable amount of money and yet her home is arguably in a worse position than when she started the works. Given her situation, I can fully appreciate why Ms W wouldn't wish to provide any further funds for work to be completed by the previous contractors and how this relationship between her and M has broken down.

Ms W has attempted to pursue the matter via Trading Standards but it doesn't appear they considered there was a viable case to prosecute M.

Based on everything I've seen, it seems hard to argue other than that M has breached its contract with Ms W. But I'm not deciding a dispute between Ms W and M – I don't have the power to look into a complaint about M. Nor can I look into whether Action Fraud or Trading Standards should have taken action against M. My role is limited to deciding the dispute between Ms W and Nationwide.

Of course, Nationwide didn't contract with Ms W for the building project she wanted done, and I can't hold it responsible for any breach of contract or other failings on M's part. As a starting point in law, Ms W is responsible for payments she's instructed Nationwide to make. Unfortunately, there's little protection available to her for bank transfer payments, like these were.

I understand Ms W considers she should've been made aware of the risk of making payments by bank transfer when sending money in branch to M. While there's a host of information banks can provide to protect customers from fraud, it's not prescriptive that a bank should advise customers to pay by other means, particularly when there aren't concerns identified of payments being made towards a scam. So I can't determine that Nationwide failed in its duty by not advising Ms W to make payment via other means.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams. But it specifically excludes private civil disputes.

There are a number of potential reasons (other than an APP scam) for a breakdown in a relationship between two parties and for such a dispute to exist. And unfortunately, businesses (such as M's business) can fail or be mismanaged such that contracts are breached and agreed goods and services aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

Specifically, the CRM Code details that private civil disputes can include payments made to a legitimate supplier where the goods ordered, or services agreed, were not received. The CRM Code will not apply to payments that meet that definition.

Instead for a payment to be covered by the CRM Code, it must meet the definition of an APP Scam under the CRM Code. In this context, that would require that the very purpose for which M procured the payment was different to what Ms W believed due to dishonest deception. While Ms W argues there were elements of deception in how M presented itself to obtain the work initially, I can't say that the purpose for procuring payment was dishonest – in other words I can't conclude that M obtained funds from Ms W with no *initial intention* of completing the works agreed. I don't dispute that the work completed doesn't comply with

building regulations and is therefore unfit for purpose – but at the same time, M *did* do work. And the work it completed doesn't appear to tie in with the typical hallmarks of builder scams whereby the scope of the work and costs involved keep ever-increasing with no apparent work being provided. From reviewing the emails provided between M and other subcontractors, it appears here that there are general disagreements between all involved at who is at fault for issues on site, which has further halted progression.

Simply put, in order to find Nationwide was somehow liable to Ms W under the CRM Code, I'd need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Ms W and M. That also means being able to exclude on the balance of probabilities the alternative possibility that this is simply a matter of M breaching its legitimate contract with Ms W.

Or to put this another way, that means deciding whether the available evidence shows it is most likely that M set out to defraud Ms W with criminal intent. That is a high bar to meet.

When considering this complaint, our investigator contacted the firm holding the account that received Ms W's payments. While I cannot detail the information that the recipient firm has provided in response, that information is not consistent with M having set out to defraud Ms W. Rather it suggests that the account's use was consistent with someone carrying out this sort of work.

It's also significant that up until now there have been no other allegations of fraud made to the bank or negative online reviews. If M had not been operating legitimately and had scammed other people, then I would've expected some customers would have contacted their own bank and alleged fraud, in the way Ms W did. I think the fact that this doesn't appear to have happened, and that the reviews online appear positive, support the argument Nationwide makes for this really being a private civil dispute.

All considered I simply can't safely conclude that M took Ms W's money without ever having any intention of carrying out the work or purchasing the items she paid for. The evidence available to me simply isn't enough to support such a finding.

I appreciate how frustrating and disappointing this answer will be. Ms W has lost a lot of money as a result of M's failure to complete the agreed work. But I can't exclude the possibility that M entered the agreement in good faith, intending to fulfil the work (as reviews suggest it had apparently done for other customers previously) and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that M intended to steal her money from the outset and never had any intent of fulfilling the arrangement in full or in part.

That means that I can't fairly hold Nationwide responsible for the loss suffered here by Ms W. It also means I find the bank had no ability or obligation to try and recover her money.

In saying all of this, I don't underestimate the impact this whole matter has had on Ms W – I am sorry she has lost out through no fault of her own. It does seem her trust in M was misplaced and she has been badly let down. But that fault lies with M and its subcontractors, not with the bank. And it's simply the case that I can't fairly tell Nationwide to pay her the money she's lost, because I don't think Nationwide has treated her unfairly or was otherwise at fault here.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 13 March 2024.

Kirsty Upton
Ombudsman