

The complaint

Mrs M complains that National Westminster Bank Plc won't refund the money she says she lost to a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of what happened here.

Mrs M engaged the services of a builder – which I'll call B – to do some work at her home. Over several months Mrs M made payments to B totalling over £18,000. She was told these payments were for labour and materials, but she was not happy with the work that was being done.

In July 2023 Mrs M spoke with NatWest about one of the payments she had made to B, she said she'd been told this payment was for blinds but had spoken to the blind company and B had not put in any order for her, she also said the amount she paid was far in excess of what blinds should have cost. At this stage NatWest told Mrs M it felt this issue was a civil dispute between her and B.

In August 2023 a structural engineer then visited Mrs M's home and commented on the poor quality of all the work B had done. Mrs M also spoke to Trading Standards, and says they told her B was acting fraudulently.

Ultimately, in August 2023, Mrs M raised her concerns formally with NatWest, she said that B had been acting fraudulently and that the payments she'd made had therefore been made as part of a scam.

NatWest looked into what had happened, but said Mrs M wasn't eligible for a refund under the relevant regulations as it didn't think she had been the victim of a scam. It said it thought this was more likely a private civil dispute between Mrs M and the builder.

Unhappy with NatWest's response, Mrs M brought her complaint to this service and one of our investigators looked into things. But they agreed with NatWest that this was most likely a civil dispute, and so Mrs M was not entitled to a refund of the payments she had made. Mrs M remained unhappy, she says any work B did do had to be redone, and that often jobs were started but not finished, she thinks the intention of B was always to scam her. So as the case could not be resolved informally, it's been passed to me for a 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.

Having done so and having thought very carefully about NatWest actions, I agree with the findings set out by our investigator. I do appreciate how disappointing this will be for Mrs M

but, whilst I'm sorry to hear of what's happened to Mrs M and her home, I don't think I can fairly hold NatWest liable for her loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I can quite understand why Mrs M feels that she has been scammed, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties and for a dispute to exist.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which NatWest has signed up to and which was in force at the time Mrs M made these payments.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether NatWest therefore ought to reimburse Mrs M under the provisions of the CRM Code.

The CRM Code is 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."

NatWest is of the opinion that Mrs M's circumstances fall into this definition of a private civil dispute and I agree that this is most likely the case here. I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that Mrs M's builder set out with an intent to defraud her from the outset. It seems more likely to me that this is a dispute about a builder failing to complete the work agreed, to the agreed standard.

I understand Mrs M feels that the quality of the work that was completed was very poor, and that much of the work she engaged B to do was not completed either to a satisfactory standard or at all. But whilst this would clearly be unacceptable to Mrs M, this doesn't mean that her circumstances meet the high legal threshold for this to be a scam where I would need to be satisfied that it was the builder's intention to deceive from the start. In my view, this amounts to a private civil dispute rather than a scam.

I do note that one of the payments Mrs M made was apparently for blinds, and that she says those blinds were never ordered and that, in any case, the quote B had given her was vastly overpriced. But I can also see that B did give Mrs M a partial refund of some of this amount, and without any clear written agreement about what this payment was for, I don't think it is unreasonable for NatWest to conclude, overall, that what has happened here is a civil dispute.

In addition to the above, the structural engineers report Mrs M has provided also documents an assessment of the work B had carried out. The report suggests that various work had been undertaken, and that B had spoken directly with the engineers regarding some of the work they were doing. So, whilst I also acknowledge Mrs M's arguments that the work was done poorly or incorrectly and that this is confirmed by the engineers report, that isn't, in and of itself, evidence of this being a scam. In fact, the fact that some work does appear to have been completed, albeit poorly, suggests the opposite. There would've been no obvious benefit to the builder in turning up on site over a number of months and completing any such work.

Furthermore, the payments made here took place between November 2022 and July 2023. Whilst there may have been delays and occasions when the builder wasn't on site, there was presumably enough work done during this time to reassure Mrs M that the work would eventually be completed as she continued to make further payments. I note that Mrs M says B used threats to extort more money from her, but I've seen copies of various messages exchanged between B and Mrs M and those messages do not support that threats were used to extort additional money, rather they show that Mrs M made payments when B requested them for additional materials and work.

In addition, whilst I am unable to share details about a third party and the nature of their relationship with their bank, the evidence I've seen, regarding the beneficiary account, indicates that the builder's account was legitimate and the bank hasn't said it had any particular concerns about how the account was being operated prior to Mrs M making her payments.

I'm also aware that B had been running for around a year when Mrs M engaged its services, and is registered on Companies House. I can see that, more recently, there has been an application to strike B off the register, but that has now been suspended, and in any case does not mean that B was not operating legitimately when the events that are the subject of this complaint took place. I also must bear in mind that, while Trading Standards and the police have apparently been involved in looking at B's activities, I've not seen anything to show that either of those entities has made any official finding that B has acted fraudulently.

Overall, I must make my decision based on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely the builder here was attempting to operate as a legitimate business at the time and that other factors ultimately meant the building work wasn't completed to the standard expected. I haven't seen evidence to persuade me that the builder set out from the beginning with the intent to defraud Mrs M.

I appreciate Mrs M does not agree, but from NatWest's point of view this situation doesn't display the hallmarks most typically associated with a scam. This is not to say that there is no issue at all between Mrs M and B. Clearly there is. But this type of dispute isn't something that the CRM Code covers (or we as an organisation are set up to deal with).

I know this will be a huge disappointment to Mrs M. I appreciate how she feels about this case, and that the work she paid for was not completed to her satisfaction. And some of the information Mrs M has sent us does suggest that B wasn't acting professionally, but that does not mean that this was a scam, rather than a case of poor and unprofessional workmanship.

I sympathise with the position Mrs M has found herself in, and I'm in no way saying that she doesn't have a legitimate grievance against B. But, for the reasons I've explained above, I do not consider that the payments in dispute here are covered under the CRM Code, or that it would be fair to hold NatWest responsible for the money Mrs M has lost.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 25 July 2024.

Sophie Mitchell

Ombudsman