

The complaint

Mr S complains that National Westminster Bank Plc ('NatWest') won't refund the money he paid to a builder.

What happened

What Mr S says

Mr S says that he has been coerced into paying a significant sum of money for work that wasn't completed by a company I'll refer to as K in this decision. He dealt with a director I'll refer to as L.

Mr S reached an agreement with L to construct a rear extension, double side storey and loft conversion. Work started in September 2021 and was due to take around eight months, although this period was later extended. In around May 2022 K identified some structural defects and at a meeting in July a completion plan was agreed that involved Mr S paying an additional £15,000 in weekly instalments. In September 2022 the remedial work was completed and signed off by K.

Mr S says that progress was inadequate and in October 2022 he again expressed concerns about the failure to adhere to the agreed completion plan and the requests for additional funds. The company that introduced Mr S to K provided Mr S with an email from L dated 10 October 2022. This email said that due to a family emergency L wouldn't be trading for a period of three months and would be cancelling all projects. Mr S says that given K's breaches a contractual notice of termination was given on 16 November 2022 – which terminated the agreement he had with K with immediate effect.

Mr S instructed a surveyor who completed a report which said that there was over £86,000 worth of defective or outstanding work based on the original specification. Building control has also expressed concern about the quality of the work completed by K.

Mr S says that other action is being taken in respect of the defective work completed and that his scam claim is only in respect of around £40,000 he paid for stage four of the project in March and April 2022. He says that none of this work was completed.

What NatWest say

NatWest didn't agree to reimburse Mr S' loss. It said there was a civil dispute between the parties in respect of the fourth stage of building works.

Mr S wasn't happy with NatWest's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said that the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case as Mr S has a civil dispute with K.

Mr S didn't agree with the investigator's findings. He said that the amount involved exceeds the small claims court limit, and he doesn't agree that he has a civil dispute for the following reasons:

- Defective work was completed at stages one to three of the project, but this is a

separate matter.

- Zero work was completed in respect of stage four and the CRM Code definition has been met.
- Mr S referred to what the CRM Code says about vulnerability and said that L asked him and his family to move out of the property for a few weeks. All utilities were disconnected, and the bathroom and kitchen removed. During this period Mr S says he was blackmailed into paying further sums of money so that tradesmen would attend the site.
- L disappeared without completing the work.
- The fact he had a pre-existing relationship with K and other work was completed is irrelevant.

The 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.

I'm sorry to hear about the situation Mr S has been left in. I don't have the power to decide any dispute between Mr S and K though. My role is limited to looking at whether NatWest has treated Mr S fairly.

As a starting point in law, Mr S is responsible for payments he has instructed NatWest to make. Unfortunately, there is little protection available to him for bank transfer payments like these.

When thinking about what is fair and reasonable in this case, I've considered whether the CRM Code applies. The CRM Code provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I have set this definition out below:

...a transfer of funds executed across Faster Payments...where:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

This definition is the only one that is relevant when deciding if Santander should reimburse Mrs D.

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

"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."*

In other words, the CRM Code isn't a general protection for customers against non-receipt of or defective goods or services. It only applies if it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met.

So, I need to consider not simply whether L made any misleading claims but whether Mr S was induced to make payments with the intent to defraud him from the outset. That would mean the evidence supports a finding that it's more likely than not (rather than just as likely) that L obtained payments for a purpose that was different to the one Mr S thought he was making the payments for because of dishonest deception. It also means being able to exclude, on the balance of probabilities, the alternative possibility that this is simply a matter of K breaching a legitimate contract with Mr S.

It's important to note that it isn't for NatWest to investigate K or to prove that L wasn't acting fraudulently. It is for Mr S to provide evidence to prove these allegations.

It is clear that when Mr S made his payments K was a legitimate business that had been registered since November 2019. There was a winding up petition in January 2023, an order of the court to wind up in April and a liquidator was appointed in May 2023, indicating a business in financial difficulty.

I have been provided with an email from L to the company that introduced Mr S to K dated 10 October 2022. It says that after his main subcontractor let him down, he fixed the issues. The project was tough to maintain, and he had to ask for more funds. The email goes on to say that L's father had been given months to live and he had dropped everything and been travelling to see him and help with his care. L stated that he would not be trading for the next three months and would be cancelling all projects and either laying his team off or handing them over to clients to manage and complete jobs. The email concludes that this will lead to other financial difficulties that he will deal with after Christmas.

I don't have the power to call witnesses to testify on oath so have no way of establishing if L stopped work for the reasons he set out in the email I have referred to above and then fell into financial difficulty as a result.

I also note that following a structural report in May 2022 when issues were identified remedial work was done by K and a further report in September 2022 said the project was progressing as intended. A site inspection report in October 2022 said a new contractor had been appointed "due to fall out with previous contractors". And Mr S has said he terminated the contract.

There is also no evidence from the police of a conviction for fraud or any other persuasive evidence to demonstrate that the high bar required for a finding of fraud has been met.

The evidence available to me simply isn't enough to support a finding that L took funds without intending to complete the work. I can't exclude the possibility that L entered the agreement in good faith, intending to fulfil the work and then was unable or unwilling to fulfil the agreement for some reason. Businesses can fail or be mismanaged such that agreements are breached and agreed services aren't provided. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that L intended to steal Mr S' money from the outset and never had any intention of fulfilling the agreement.

I have reached a decision based on the evidence that is available now. If material new evidence comes to light at a later stage, Mr S may start another complaint.

As I've decided the CRM Code doesn't apply, I can't consider Mr S' point about vulnerability under it.

I've seen no other reason why NatWest ought to have prevented these payments or needs to refund Mr S. There's no dispute here that he authorised the payments. Because of this, NatWest had an obligation to follow Mr S' instructions. But it was possible for NatWest to stop the payments if it had reasonably been put on notice that the funds were being misappropriated.

In this case I consider that if NatWest had intervened and asked about the payments Mr S would have said that he was paying a builder who had already completed work and that he

had detailed documentation. I'm not persuaded NatWest would have had any concerns that Mr S' funds were at risk.

Overall, I can't fairly hold NatWest responsible for Mr S' loss.

My final decision

For the reasons stated, I do not uphold this complaint.

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

Jay Hadfield
Ombudsman