

The complaint

Mr K complains National Westminster Bank Plc hasn't refunded him after he reported falling victim to a scam.

What happened

The background to this complaint is well-known to both parties and so I'll only provide a brief summary here.

Mr K engaged the services of a building firm (I'll refer to it as A) in October 2022. A had been well-reviewed online and came with many recommendations and references.

Mr K contracted with A for work to be carried out on his home. It was to be completed in two main phases. The first was for the main house and the second was for a garage conversion. Work begun and progressed largely as planned through to the end of phase one. Mr K had paid A a total of £50,000 by this point.

When it came to phase two getting underway there were some unexpected delays caused by planning issues and the need to secure a party wall agreement. These delays were outside the control of either Mr K or A. This emerged as a problem in February 2023 and wasn't resolved until the middle of June 2023.

Before those issues were resolved, A asked Mr K for further payment. He said the money was needed to buy materials for phase two up front. Mr K initially declined but A asked again, stating that the cost of materials was due to increase in April 2023 and so they wanted to order materials ahead of that, to save cost.

Mr K agreed to pay A on its second request, given the increase in supply costs. He sent A a further £21,358 in February 2023.

Once the planning and party wall issues were resolved Mr K contacted A about continuing the job. A said it was busy with other jobs, particularly as it had staff on holiday. Several start dates were proposed but then cancelled. In September 2023 the director of A said he was very unwell and had had to stop all work. He was unsure as to when he'd be able to start again.

Mr K kept in touch, but A's director continued to say he was too unwell to work. Mr K says A agreed to return funds in October, but these were never received. And by January 2024 there was no further contact from A.

During this time Mr K discovered that A hadn't ordered some of the steel beams that had been promised and which had been confirmed as paid for. Mr K suspects no other materials were put on order despite the payments to A.

Mr K contacted NatWest to report what had happened. It considered the circumstances but said it was unable to help. Whilst Mr K said he'd been the victim of a scam, NatWest felt the matter was a civil dispute between him and A on the grounds of goods/services not received.

Mr K disagreed and brought his complaint to our service. One of our investigator's considered the evidence and circumstances of the complaint and found NatWest had acted fairly and reasonably in the circumstances. He didn't believe there was evidence to show a scam had taken place, and so there weren't grounds to say NatWest ought to reimburse Mr K's loss.

Mr K disagreed and 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.

I'm sorry to hear that Mr K has lost such a significant sum of money. It's clear to me that is the case. And I don't doubt the impact this has had on him and his family. But having considered everything, I'm reaching the same outcome as our investigator and for broadly the same reasons. I can't say that it's NatWest that ought to bear responsibility for his loss. I'll explain why.

The starting point at law is that Mr K is responsible for any payments he makes from his account with NatWest. This is set out in the Payment Service Regulations (2017) and confirmed in his account terms and conditions.

But NatWest is also a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. The Code is in place to see the victims of scams reimbursed in most cases. But it doesn't apply to all payments made from a customer's account or all disputes that might be raised.

The Code states at DS2(2)(b):

This Code does not apply to:

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 has said it declined to refund Mr K because it believes his is a civil dispute, where A has failed to deliver the goods and services it was contracted to. It's then for me to determine whether that is a fair and reasonable position for NatWest to have reached. I'm satisfied it is. I'd have to otherwise be satisfied that it was always A's intent to take Mr K's money and not complete the work it was contracted to. Which I don't find there is sufficient evidence of.

A was an established limited company, registered with Companies House. It completed the required paperwork for its registration and to remain a going concern up to and including April 2023. It has since been dissolved, in June 2024.

A had a strong online presence, with a professional website, and it was well reviewed on websites used by customers to find reliable tradespeople.

A commenced work as planned and completed phase one of the work it was contracted to. It had been paid £50,000 by the end of that phase.

A appears to have continued to receive positive feedback from work completed into May 2023.

These points strongly indicate A was a legitimate building firm that had been trading for some time and delivering what was promised. That is also reflected in the account statements of A, which I've had sight of.

I can't share much of the detail around what the statements show, due to data protection. But I can confirm there have been no other reports of a scam against A. That isn't conclusive in and of itself. But it is generally common for a scam builder to target several victims at once, or over a period of time. There's no evidence of that being the case with A.

I'm satisfied the account statements of A reflect the kind of activity I'd expect of a building firm for many months, including through to September 2023. After that the activity does

abruptly end, which would support what A said about being unable to continue working, whether that be through sickness, financial difficulties, or a combination of the two.

Mr K paid A the extra money in February 2023. A then maintained contact with Mr K regularly whilst waiting for the planning/party wall issues to be resolved and beyond. If A's intent had been to steal Mr K's money and not complete the work from the outset, I consider it unlikely that it would have maintained contact with him for so long.

I can't say exactly what happened to Mr K's money once it was with A, though it's clear it's been lost to him. But, that the funds might not have either remained in A's account awaiting works to progress, or there being a lack of clear evidence to show materials were or weren't purchased, doesn't provide me with strong enough reason to find a scam has taken place. There could be a multitude of reasons that ultimately sit behind Mr K's loss. A might have made the decision to order materials at a later time, being unsure when the planning/party wall issues would be resolved. It might have used the funds on other jobs with the intention of securing other work to later pay for Mr K's project. But none of these would mark A out as an intentional scammer. Such actions might be considered poor and unfair business practices. But there isn't sufficient evidence here for me to say that A's intention was always to scam Mr K when it took his money in February 2023.

In making my findings I have also taken account of some apparent falsehoods expressed by A across the time Mr K dealt with it. That includes, but is not limited to, A appearing to say that all steels for the project had been ordered and paid for, but where that wasn't the case. But I'm not persuaded that shows A to have been operating as or intending to deploy a scam. Not as opposed to it representing bad behaviour and poor business practice.

Instead, I'm persuaded that, for whatever reason, A has failed to deliver the goods and services it was contracted to provide. That is a civil dispute between Mr K and A, and so it wouldn't be covered by the Code. It then follows that NatWest's decision to decline reimbursement for that reason was fair and reasonable in the circumstances.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 February 2025.

Ben Murray
Ombudsman