

The complaint

Mr B complains that Nationwide Building Society ('Nationwide') won't refund the money he paid to a building company.

What happened

Mr B says that he obtained three quotes to replace the original roof at his home. He and his wife then invited the owner of a company I'll refer to in this decision as L to visit and discuss the work required. The owner was polite and knowledgeable. After the meeting, Mr B researched L and decided to go ahead. Mr B was provided with a contract to sign and was asked to pay £10,000 as a deposit for materials, scaffolding and to hire skips.

When Mr B initiated the transfer Nationwide provided an onscreen warning. Mr B is deaf so asked his wife to call Nationwide while he was present to understand why the message appeared. During this call Mr B's wife asked if he would be covered if the builder went bankrupt or if anything went wrong and was advised that he would so Mr B went ahead with the payment.

Ultimately the materials didn't arrive, work didn't start, and the builder told Mr B that he would give him a refund. This didn't happen and Mr B was told L had no money to continue trading.

Mr B reported what had happened to Nationwide. Nationwide said that Mr B had a civil dispute with L and there was no evidence L set out to scam him from the outset. Nationwide accepted it had provided incorrect advice when Mr B called at the time of payment. Initially Nationwide offered Mr B £75 compensation but when this was rejected Nationwide increased its offer to £200, and reiterated that Mr B had a civil dispute with L.

Mr B was unhappy with Nationwide's response and brought a complaint to this service. He said that had he been given the correct advice he would never have made the payment.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said Mr B has a civil dispute with L and that Nationwide is correct in saying it can't recall the lost funds. The investigator went on to say that Nationwide had given incorrect advice but that had the correct advice been given Mr B wouldn't have acted differently.

Mr B didn't agree with the investigator's findings. He said he was the victim of a scam and that Nationwide is guilty of misrepresentation. Mr B also said he'd like to make a complaint about the Nationwide staff member who initially listened to the pre-payment call and concluded Nationwide hadn't done anything wrong.

I reviewed Mr B's complaint and contacted Nationwide to explain why I felt it should refund Mr B in full plus interest. I said that as a direct consequence of Nationwide's incorrect advice Mr B had lost £10,000. Nationwide accepted it had made a mistake but asked for additional information about other quotations obtained by Mr B, whether Mr B could have paid L by credit card and whether he had available credit. I felt that Nationwide had the opportunity to complete investigations when it considered Mr B's complaint, so I issued a provisional decision on 9 April 2024. In the 'What I've provisionally decided – and why' section of my provisional decision I said:

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 B has been left in. I don't have the power to decide any dispute between Mr B and L though. My role is limited to looking at whether Nationwide has treated Mr B fairly.

Although Mr B says he paid L by debit card this isn't correct and so the remedy that potentially applies to payments of this nature doesn't apply. I have seen evidence which confirms that he made a faster payment.

The Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) provides protection to scam victims who have made faster payments. 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.*

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. I haven't been provided with any such evidence.

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

At the time Mr B made the payment L was a company that had been registered and trading since September 2020. It appears to have run into financial difficulties and there was an application to strike off in October 2023. But this was after Mr B made his payment. 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. Allegations that a director of L used funds for lavish holidays aren't enough to prove fraud.

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.

I am aware that Mr B brought court proceedings against the director of L personally. He has a judgement in his favour which appears to be because the director of L didn't attend court rather than because a court heard the evidence and decided in Mr B's favour. If this is incorrect Mr B should provide evidence to show why. Mr B has provided evidence of efforts to enforce the judgement which have not been successful and have been dropped.

Whilst I'm unable to conclude that Nationwide should reimburse Mr B's loss under the CRM Code, I've considered the wider circumstances at the time of payment. Mr B called Nationwide's Scam Checker Service with his wife after receiving an online warning when setting up the transfer. The call was poorly handled by the Nationwide advisor, who was meant to be an expert.

Mr B's wife asked,

"If we do this payment on debit card and he does go bust or anything, or you know is there any way we can get our money back or no?"

After establishing that Mr B wasn't paying by debit card Mr B's wife was assured they would be covered if anything went wrong. Mr B asked his wife to ask Nationwide about section 75 (of the Consumer Credit Act 1974) and astonishingly the Nationwide advisor said she didn't know anything about that. She nevertheless reconfirmed that Mr B would be covered as long as he had checked the details (which I take to mean account details).

The information provided to Mr B was clearly incorrect. He told this service,

"...I would not have made the payment of £10,000 if there was the slightest doubt that I would not have been covered with regards to the company that I paid should they have gone bankrupt or stopped trading or if it was a scam."

I'm satisfied that Mr B was cautious as he called Nationwide for expert advice after receiving a scam warning. He has referred to his anxiety which likely played a part in his decision to do so. He specifically asked questions to ensure that in the event something went wrong he would be covered and was provided with incorrect advice that he relied on. If the correct advice had been given there were other options available to Mr B, such as paying L by credit card or choosing another builder he had received a quote from and paying via this method if L didn't allow him to do so. I don't consider he'd have continued with a payment method that offered very little protection if he had been given the advice he should have been.

In reliance on incorrect advice given by someone who was meant to have expert knowledge Mr B lost £10,000. I'm persuaded Nationwide should reimburse this loss.

I turn now to the service Nationwide has provided. Mr B has referred to a complaint against a specific individual at Nationwide but this service looks at service as a whole. Mr B has serious health conditions and has explained the huge impact of what has happened on his health and finances. He has lost his life savings. I have no doubt that Nationwide's handling of this situation has led to additional unnecessary stress and worry. Nationwide has already offered Mr B £200 compensation, which I think is fair. If Nationwide hasn't already paid Mr B this amount it should do so now.

Overall, I consider the fair and reasonable outcome is that Nationwide refund Mr B's loss.

Mr B said he had nothing further to add except that L took money from another party and didn't use it for the intended purpose. Nationwide accepted my provisional findings. It said that the poor service it provided led Mr B to make the payment and agreed to refund £10,000 plus interest, and £200 compensation previously offered. Nationwide also apologised to Mr B for not making the decision to reimburse sooner.

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 neither party has raised any substantial new points my final decision is the same as my provisional decision and for the same reasons. I have reproduced my reasoning above.

I'm not satisfied that Mr B was the victim of an APP scam as set out in the CRM Code. But Mr B relied on incorrect advice given to him by an expert at Nationwide and lost £10,000 as

a result. I'm persuaded that if Mr B had been given the correct advice, he would not have made a faster payment of £10,000 to L. As a result, Nationwide should put things right as set out below.

My final decision

For the reasons stated, I uphold this complaint and require Nationwide Building Society to:

- Pay Mr B £10,000; and
- Pay interest on the above amount at the rate of 8% simple per annum from the date of loss to the date of settlement; and
- Pay Mr B £200 compensation (if not already paid).

If Nationwide Building Society considers that it is required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mr B how much it has taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 June 2024.

Jay Hadfield
Ombudsman