

The complaint

Miss G complains that Nationwide Building Society won't refund the money she lost when she was the victim of what she feels was a scam.

What happened

In late 2021, Miss G was looking to get some building work done at her property. She spoke with someone she knew had carried out other building work locally and agreed for them to carry out the work at her property. And Miss G then made a number of payments to the builder, and the builder's mother, from her Nationwide account to pay for labour and materials.

Unfortunately, the building work wasn't completed and the builder stopped responding to Miss G. So Miss G reported the payments she had made to Nationwide as a scam and asked it to refund the money she had lost.

Nationwide investigated, but said it had found no evidence of fraud with the payments Miss G had made. So it said it didn't think this was a scam and didn't agree to refund the payments she had made. Miss G wasn't satisfied with Nationwide's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the evidence suggested the builder had set out to defraud Miss G from the outset, so didn't think this met the definition of a scam. So they didn't recommend that Nationwide should have to refund the money Miss G had lost. Miss G disagreed with our investigator, 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.

Having done so, I don't think it would be fair to require Nationwide to refund the money Miss G has lost here. I'll explain why below.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Nationwide is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

The CRM code defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says that it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier.

So in order to determine whether Nationwide should refund the money Miss G lost under the CRM code, I need to consider whether she has been the victim of a scam – or, in other words, whether she was deceived about the purpose of the payments to the point where she and the builder intended different purposes for the payments and the builder set out from the beginning with the intent to defraud her.

I've thought very carefully about this, and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

From what Miss G has said, she had met the builder previously as he and some of his family lived locally. She'd also been told by other people who lived locally that the builder was trustworthy and a good worker. And she'd seen examples of other work the builder had done locally, which were completed and done to a good standard. But this isn't how I would expect a scammer to get in contact with potential victims, and I wouldn't expect a scammer to be able to arrange these kinds of recommendations or examples of completed work.

The builder started at least some of the agreed work at Miss G's property and they appear to have been working there, at least on and off and in some capacity, for a significant period of time. And, from Miss G's own statements and calculations, some of the agreed work was completed, other parts of the work were started, and the total value of the work done by the builder was around £20,000. But I'd usually expect a scammer to do as little work as possible in order to get the maximum possible profit in the shortest period of time. So more work appears to have been done here than I'd expect from someone who never intended to complete the work, which I think suggests the builder did intend to complete the work here.

And while I understand much of the agreed work at Miss G's property was left unfinished or not started, this by itself does not mean that she has been the victim of a scam as tradespeople can fail to complete work or complete work to a poor standard for a variety of reasons.

The copies of the text messages between her and the builder Miss G has sent us also seem to show the builder was still working at her property, at least in some capacity, after the last payment she sent to them. The builder also continued communicating with her for a number of weeks after the last payment she sent them. And the builder sent a number of payments back to Miss G's account towards the end of the period in which Miss G was sending payments to them, which totalled a significant amount of money. But I wouldn't expect a scammer who always intended to steal their victim's money to continue communicating with them or coming to their property after they had received the money, or to send any money back to the victim. So I also think these things suggest the builder here was attempting to operate as a legitimate business.

The bank most of the payments Miss G made were sent to has also told us that it didn't have any concerns about the account at the time Miss G made the payments. And I've seen evidence relating to the account the payments were made to, which shows it appears to

have been run as I would expect a legitimate tradesperson's account to have been and doesn't suggest it was being used to operate a scam at the time.

I appreciate that Miss G has sent us copies of court judgments she has obtained against the builder for the money she lost. But I haven't seen anything to suggest the court made a judgment on whether the builder had operated a scam, and it appears the ruling was made in her favour as the builder didn't defend themselves. So I don't think these judgments necessarily show that the builder was operating a scam.

And while it appears Miss G was given incorrect information by the builder about needing to make some of the payments to their mother, I don't think this necessarily means the builder was operating a scam either. I recognise it suggests the builder may not have been acting as I would expect a professional company to do. But acting unprofessionally does not mean the builder was operating a scam.

I must make a decision 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 intended to complete the work, but that other factors ultimately meant the building work wasn't completed.

I don't think I can safely say the circumstances here meet the high legal threshold and burden of proof for fraud. I don't think the evidence I've seen suggests the builder deceived Miss G about the purposes of the payments or set out from the beginning with the intent to defraud her. I think both Miss G and the builder's intentions for the payments were the same – to carry out the agreed work. So I don't think the circumstances here meet the definition of a scam from the CRM code.

And so I don't think the payments Miss G made to the builder are covered under the CRM code, or that Nationwide should be required to refund the money she lost.

I sympathise with the position Miss G has found herself in, and I'm in no way saying she did anything wrong or that she doesn't have a legitimate grievance against the builder. But I can only look at Nationwide's responsibilities here and, for the reasons I've explained above, I don't think it would be fair to hold Nationwide responsible for the money she lost.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 23 August 2024.

Alan Millward
Ombudsman

