

The complaint

Mr R is unhappy that National Westminster Bank Plc has decided not to refund him after he raised a scam claim.

What happened

Mr R says he contacted a company to install a new roof at his home, I'll refer to the company as T. Mr R says he found T advertising in a reputable local magazine and T had a professional website.

T attended the property, provided a quote and started the work. But Mr R says he was coerced and extorted for additional payments. Mr R says his roof was left open to the elements and T would not continue the work until further payment was made. T eventually left his premises leaving Mr R's roof in need of repair.

Mr R says when he contacted the bank to raise a scam claim the process was flawed. His online complaint was not acknowledged. The bank refused to carry out an investigation without any details or evidence considered. Mr R is also unhappy that the bank didn't flag the payment when it was made. He said this was a high value transaction to a new payee. The bank didn't call or text him to check the transaction or provide guidance.

The bank considered Mr R's claim and said the matter was a civil dispute between Mr R and T and the bank was therefore not liable to refund him under the CRM code.

Mr R has asserted that T has connections with criminals convicted of trading scams and used various company names to trade under. The names of which are known to the Police and Trading Standards. Mr R says T has avoided Tax and VAT and doesn't have insurance as it claims, it's therefore not a legitimate business. Mr R says T's website is evidence of it being fraudulent as it says it's been running for 20 years but was only incorporated as a Limited company in the last couple of years.

Mr R brought his complaint to our service. One of our investigators looked into things. She said that the bank's conclusion seemed fair in the circumstances. She was persuaded the matter was a civil dispute, as Mr R had said some of the work was completed and new roof installed. Mr R was ultimately unhappy that the work hadn't been completed to a satisfactory standard. The investigator also considered information about the recipient account and found no concerns. She also considered that even if the bank had intervened, she didn't think it would have had any concerns about the payment Mr R was making. She didn't uphold Mr R's complaint.

Mr R did not accept the investigators findings and asked for an ombudsman to review the complaint. He disagreed with the finding about the amount of work that was done to his roof. He added that there was an ongoing Police investigation into the recipient of the funds. And he paid a personal account rather than T's business account and this should have been a red flag to the bank. Mr R said there is evidence that T intended to scam him from the outset as the works weren't carried out, no guarantee had been honoured and his house has been left in a state of disrepair.

As the complaint couldn't be resolved it's been passed to me for consideration.

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'll start by saying I'm sorry that Mr R has lost out as a result of what's happened here. I can see that Mr R has suffered greatly and incurred additional costs, as well as the initial outlay for the work he contracted T to undertake. But it's my role to consider, whether the bank is responsible for those losses. And unfortunately, I'm not recommending that the bank refund him here. I'll explain why.

A bank's primary obligation, when it receives a payment instruction from its customer is to carry out that instruction without delay. Even if the bank had taken the step of discussing the payment with Mr R, prior to carrying out his instructions, I find the bank would most likely have had no reasonable grounds on which to prevent Mr R from proceeding to make that payment. I simply don't think either Mr R or the bank would have likely uncovered sufficient cause for concern about the company Mr R was contracting with, or the individual Mr R was paying, at that point, given how he'd found the company, the information in the public domain about T and the quote he'd received. And although Mr R paid a personal account rather than a company account, the individual is the named director for T, on Companies House.

That leads me to find, that the bank could not reasonably be held liable through any failure to prevent or somehow stop Mr R from making this payment. Having considered this, I find that outside the provisions of the CRM Code I could not fairly hold the bank liable to reimburse Mr R.

What remains at the core of the complaint is the question of whether the CRM Code applies to Mr R's payment.

I'm sorry to have to disappoint Mr R but I agree with the investigator that this is a civil dispute and therefore not covered by the CRM code. That's not to take away that Mr R hasn't suffered a loss or, that some fraudulent behaviour was underlying T's actions. But not all instances of fraud will be enough to say that a bank is responsible for a consumer's losses. I need to see convincing evidence that Mr R has been the victim of an Authorised Push Payment (APP) scam and meets the requirements under the CRM code, in order for that to be the case.

I will explain what I consider the CRM Code covers and why I think that. The Scope and Definitions section of the CRM Code details that the CRM Code can only apply to authorised payments meeting the code's definition of an 'APP Scam'.

DS1(2)(a) of the code defines an APP scam as:

APP scam

Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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 also specifically excludes private civil disputes with the following definition.

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;

In order for the consumer to have been the victim of an APP scam the consumer must have been deceived about the very purpose for which their payment has been procured.

For there to be ‘*fraudulent purposes*’ (as opposed to legitimate purposes) it would require the test for fraud to be met in relation to the *purposes* for which the payment was procured. That must have been at the time the payment transaction occurred or earlier. It does not follow that fraud at a later date can engage the CRM Code’s definition of an APP scam. Neither would fraud which doesn’t speak to the *purpose* of the payment. I take it to follow that there may be situations where false representations were made which could amount to fraud under the Fraud Act, but which don’t have the effect of the payment falling within the scope of the definition of APP Scam set out under the CRM Code.

I don’t have the power to conduct a criminal investigation into T. Part of what is required here is to establish the intent and state of mind of the person(s) accused of this fraud about the purpose of Mr R’s payment.

When considering the evidence produced in support of Mr R’s claim of an APP scam, I’m required to reach my findings on a balance of probabilities rather than to the criminal standard. But given the serious nature of the allegations involved I consider that this must involve convincing evidence to lead me to find it more likely than not the underlying purpose of the payment transaction was a fraudulent purpose.

Mr R has provided the initial invoice from T, some photos of the work, plus a secondary invoice from a different company to repair the roof. He hasn’t been able to provide any correspondence between him and T to show what communications or attempted contact took place. So, although he says T extorted money from him and refused to do the work until payment was made, I haven’t seen anything else to support this. I haven’t seen what attempts Mr R or T made to resolve the issues. Incomplete work or work to a sub-standard, whilst may have other implications in law, do not in and of itself, mean that Mr R has been the victim of an APP scam and that the bank is liable for his losses as a result. While I have considered all of these, and the other allegations made, these do not fundamentally speak to the purpose for which funds were procured. T did ultimately engage in the work on the roof.

What I can see is that T appears to be an on-going and trading company, with a live website. Some work on the roof took place albeit it isn’t clear how much work was completed. What is clear is that Mr R remained unhappy with the quality of that work. Whilst I can see that Mr R was quoted by a secondary company this is not conclusive evidence that no work was completed by T or that the work wasn’t to the required standard. And ultimately T carried out work and appeared to be in the trade of doing so. The recipient bank accounts also support this finding. And so, I’m persuaded here, that the purpose of the payment was not fraudulent.

I agree with Mr R that a registration on Companies House does not in and of itself make the company legitimate. But Mr R has made several claims about T without any supporting evidence. I have seen that Trading Standards and the Police have been in contact with him to say they are considering the matter but an investigation isn't enough to persuade me that there was no intention by T to provide the services, especially in light of the other evidence I have referred to. And any number of possibilities could have occurred, including the breakdown of a relationship between a customer and tradesman. And although I don't doubt the predicament Mr R has been left in, overall, I haven't seen convincing evidence that this came about as the result of an APP scam in order to say the bank ought reasonably to be held liable for his losses.

Mr R has mentioned Police and Trading Standards involvement and if those investigations result in any new or material evidence relevant to Mr R's claim then he can of course raise a new complaint with his bank at the time. But as it stands there is not convincing evidence that the issues Mr R has faced with T are the result of APP scam where T intended from the outset not to do the work as contracted.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 July 2024.

Sophia Smith
Ombudsman