

## **The complaint**

Mr and Mrs W complain that Nationwide Building Society won't refund the money they transferred to a builder who has failed to complete the agreed work.

## **What happened**

The background to this complaint is well known to both parties and the investigator's view covered this in detail, so I'm not going to cover everything again here.

In summary, Mr and Mrs W have explained that they were looking to complete renovations on their family home and, on the recommendation of another individual in a similar position, enlisted the services of a building company that I'll refer to as 'M'. The scope of the work was a single storey extension, a reconfiguration of upstairs bedrooms and a new bathroom. The scope of the work later extended to include a complimentary driveway, new gate and removal of a wall. The overall cost for the work was quoted as just under £80,000.

Mr and Mrs W agreed to pay 25% of the project cost up front, 25% midway through and 50% at the end. However, as the project progressed, M requested on several occasions for funds due at the end of the project to be paid earlier, stating that this was due to sub-contractors needing payment, the project overrunning and there being more work involved than anticipated.

Mr and Mrs W agreed to some requests for earlier payment, but also pushed back on others as not being the agreed contract. They then began to uncover issues with work that had been done, or that was still outstanding. For example, Mr and Mrs W have explained M gave reassurances it was in contact with the building inspectors, when in fact it appears no contact had been made since the extension foundations were signed off. Mr and Mrs W were provided with certificates for their electrics which they now understand to be falsified. They also paid for a kitchen they understood to be ordered, when in fact a proportion of the kitchen hadn't been ordered. Mr and Mrs W have also received contact from other customers of M, who have stated they are in similar positions to them. There are also several negative online reviews regarding the workmanship of M.

Overall, there has been a considerable amount of work done to Mr and Mrs W's house, such as an extension built, a bathroom fitted, a kitchen partly fitted, plastering and decorating. However a lot of this work was done to a poor, or in some cases, unsafe, standard. There has also been damage caused to Mr and Mrs W's home as the result of the house being left exposed to the weather and leaks, including a collapsed ceiling. Mr and Mrs W have enlisted an inspection of the works completed, which confirms a number of issues with the work.

As a result of their home being left in disrepair and being financially impacted from needing to put work right, Mr and Mrs W considered they'd been the victims of a scam and contacted Nationwide to raise a claim.

Nationwide considered their claim but didn't uphold it. It considered this was a civil dispute between Mr and Mrs W, and M. Mr and Mrs W remained unhappy and referred their complaint to our service.

An investigator considered the complaint but didn't uphold it. She thought that while the work was clearly to a poor standard, there wasn't sufficient evidence to confirm that M intended to defraud Mr and Mrs W from the outset, in order to consider this a scam.

Mr and Mrs W disagreed. They highlighted other decisions of a similar nature where our service had determined a scam had taken place, despite works being completed. They also provided evidence that M has a number of CCJs against it, which they don't consider is indicative of a genuine firm and that the address registered for the firm isn't legitimate. They didn't consider the evidence supported that M ever intended to complete the works.

As Mr and Mrs W disagreed with the investigator's view, the complaint has been referred to me for a final decision.

### **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 very sorry to hear of the position Mr and Mrs W have been left in. They have paid out a considerable amount of money and yet their home was left far from complete and arguably in a worst position than when they started in some areas.

I also understand Mr and Mrs W have contacted both the Police and Trading Standards, but neither have so far taken further action against M.

Based on everything I've seen, it seems hard to argue other than that M has breached its contract with Mr and Mrs W. But I'm not deciding a dispute between Mr and Mrs W and M – I don't have the power to look into a complaint about M. Nor can I look into whether Action Fraud or Trading Standards should have taken action against M. My role is limited to deciding the dispute between Mr and Mrs W and Nationwide.

Of course, Nationwide didn't contract with Mr and Mrs W for the building project they wanted done, and I can't hold it responsible for any breach of contract or other failings on M's part. As a starting point in law, Mr and Mrs W are responsible for payments they've instructed Nationwide to make. Unfortunately, there's little protection available to them for bank transfer payments, like these largely were.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams. But it specifically excludes private civil disputes.

There are a number of potential reasons (other than an APP scam) for a breakdown in a relationship between two parties and for such a dispute to exist. And unfortunately, businesses (such as M's business) can fail or be mismanaged such that contracts are breached and agreed goods and services aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

Specifically, the CRM Code details that private civil disputes can include payments made to a legitimate supplier where the goods ordered, or services agreed, were not received. The CRM Code will not apply to payments that meet that definition.

Instead for a payment to be covered by the CRM Code, it must meet the definition of an APP Scam under the CRM Code. In this context, that would require that the very purpose for which M procured the payment was different to what Mr and Mrs W believed due to dishonest deception. While the evidence provided by Mr and Mrs W does suggest M has

been dishonest in some of its dealings, such as, for example the certificate for their electrics, I can't say that the purpose for procuring payment was dishonest – in other words I can't conclude that M obtained funds from Mr and Mrs W with no *initial intention* of completing the works agreed. I don't dispute that the work completed is unsatisfactory and was, in areas, left unsafe - and is therefore unfit for purpose – but at the same time, M *did* do work. And the work it completed doesn't appear to tie in with the typical hallmarks of builder scams. For example, it doesn't appear M attempted to extort as much funds as possible before becoming unreachable, or cause damage to Mr and Mrs W's house with the clear intention of increasing the initial quote. A notable proportion of the work it appears has been done – just to an unacceptable standard.

I accept Mr and Mrs W's comments that the completion of work doesn't mean that a builder can't be a fraudster – as they've indicated from other decisions highlighted. I agree with this point, but our service considers complaints on a case by case basis. In each scenario we need to consider what the purpose was for completing that work – whether it was with an intention of fulfilling the contract, or purely a guise to appear that work was being done. In this case I don't think the evidence supports it was the latter. For example, the work went beyond pure demolition work, there was clearly outlay by M into materials and costs incurred for subcontractors. Therefore while we can never be certain what M's intentions were when first agreeing to this contract, I don't think there is enough evidence to support it planned to scam from the outset.

Simply put, in order to find Nationwide was somehow liable to Mr and Mrs W under the CRM Code, I'd need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Mr and Mrs W and M. That also means being able to exclude on the balance of probabilities the alternative possibility that this is simply a matter of M breaching its legitimate contract with them.

Or to put this another way, that means deciding whether the available evidence shows it is most likely that M set out to defraud Mr and Mrs W with criminal intent. That is a high bar to meet.

I've also considered the evidence provided by Mr and Mrs W that other customers of M have experienced similar issues to them. However, I don't think this supports that M was a scam any more than it supports the other possibility that M was either financially mismanaged or otherwise insufficiently equipped to complete the jobs it agreed to.

All considered I simply can't safely conclude that M took Mr and Mrs W's money without ever having any intention of carrying out the work they paid for. The evidence available to me simply isn't enough to support such a finding.

I appreciate how frustrating and disappointing this answer will be. Mr and Mrs W have lost a lot of money as a result of M's failure to complete the agreed work. But I can't exclude the possibility that M entered the agreement in good faith, intending to fulfil the work and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that M intended to steal their money from the outset and never had any intent of fulfilling the arrangement in full or in part.

That means that I can't fairly hold Nationwide responsible for the loss suffered here. It also means I find the bank had no ability or obligation to try and recover Mr and Mrs W's money.

In saying all of this, I don't underestimate the impact this whole matter has had on Mr and Mrs W – I am sorry they have lost out through no fault of their own. It does seem their trust in

M was misplaced and they have been badly let down. But that fault lies with M and its subcontractors, not with the bank. And it's simply the case that I can't fairly tell Nationwide to pay them the money they've lost, because I don't think Nationwide has treated them unfairly or was otherwise at fault here.

Mr and Mrs W did additionally make one payment towards M by credit card. However, I'm aware that they have already raised this claim with Nationwide and are not pursuing recovery on this payment further.

### **My final decision**

My final decision is that I don't uphold Mr and Mrs W's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 31 March 2025.

Kirsty Upton  
**Ombudsman**