

## **The complaint**

Miss W complains that Nationwide Building Society ('Nationwide') won't refund the money she says was lost as the result of a scam.

## **What happened**

In January 2022, Miss W wanted to renovate her bathroom. Miss W engaged the services of a plumbing company I'll refer to as N. Miss W dealt with the director of N, I'll refer to the director as J. Miss W says J came to view her property and gave a satisfactory quote. After paying a deposit, J started work on the renovation of the bathroom.

Miss W made three separate payments in relation to the renovation:

- a bank transfer of £125 in January 2022,
- a credit card payment of £1,789.73 in February 2022, and
- another bank transfer of £3,000 in February 2022.

Miss W says J didn't complete the agreed work, and what work they did complete, had to be redone. She has also referred to damage caused by the work J completed. At the end of February 2022, the relationship between Miss W and J broke down. Miss W says J became abusive and demanded money upfront, and that she was the victim of an assault.

Miss W raised a fraud claim with Nationwide, asking that they refund the money she'd lost.

Nationwide said Miss W had a civil dispute in relation to the bank transfers she made to J. But they considered her credit card payment, under section 75 of the Consumer Credit Act 1974. Nationwide agreed that Miss W had a claim under section 75 and offered to refund her £346.58. Nationwide said Miss W hadn't made the final contractual payment to J of £1,085.27 and had paid a new tradesperson £1,431.58 to remedy and complete the work. So, they offered to refund the difference between these amounts, being £346.58.

Miss W wasn't happy with the outcome on her fraud claim and raised a complaint with Nationwide, as part of which she also raised concerns about the level of customer service she'd received from Nationwide.

Nationwide upheld Miss W's complaint about the service she received. Initially they paid her £50 but increased this by an additional £150 for the repeated errors made.

Miss W wasn't happy with Nationwide's offer and brought a complaint to our service.

An investigator looked into Miss W's complaint and didn't uphold it. The investigator felt that the £346.58 offered by Nationwide for the credit card payment was fair, as there was a breach of contract. And, Nationwide acted reasonably in saying Miss W had a civil dispute with J in relation to the bank transfers. The investigator also felt the £200 compensation was fair, for the poor service Miss W received.

Miss W didn't accept the investigator's opinion and raised a number of points, including:

- She isn't claiming a breach of contract, rather she is saying she was the victim of a scam.
- The contract price of £6,000 which Nationwide and the investigator used to calculate the refund of £346.58 isn't correct. N's website said that she was entitled to a 10% discount, which means she should be getting a higher refund. This wasn't included on the written quotation she got, but she had discussed it with J.
- When J removed their tools from the site, they had no intention of returning to complete the work and left her home in an uninhabitable condition.
- N used fake recommendations on their website, and incorrectly said they were members of Gas Safe and approved by another company that vets tradespeople. Miss W says this shows that N misled her and there was deception.
- Miss W provided evidence of an Interim Debt Order that was entered by the court.
- Nationwide should've intervened when she made the payments and didn't meet their duty to protect her.
- The compensation she's been offered doesn't remedy the amount she's out of pocket as a result of the scam.

Miss W asked for an ombudsman to review her case.

Having reviewed the case, I reached the same answer as the investigator. But I wanted to provide some additional reasoning and address some evidence Miss W provided, which wasn't covered by the investigator. So, I issued a provisional decision giving both parties a chance to provide any further evidence they want considered before I issued a final decision.

### **My provisional decision**

In my provisional decision I said:

I'm really sorry to hear about the difficulties that Miss W has faced, both in relation to the state her home was left in and the abuse and threats that she received. I understand that this has been an extremely distressing experience for her and has seriously impacted her wellbeing, as well as that of her family.

In broad terms, the starting position in law is that Nationwide are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

I've considered whether Nationwide is liable in relation to the credit card payment, separately to the bank transfers. This is because a claim in relation to the credit card payment can be considered under section 75 of the Consumer Credit Act 1974, but the bank transfers can't. And, the bank transfers may be covered by the Contingent Reimbursement Model Code (CRM Code), which can't be applied to credit card payments.

#### Is Miss W entitled to a refund under the CRM Code for the bank transfers?

Nationwide are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM 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.

The CRM Code defines what is considered an APP scam as, “where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent”.

In order to decide whether the circumstances under which Miss W made her payments meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Miss W thought this purpose was legitimate.
- The purpose the recipient (N/J) had in mind at the time of the payments and whether this was broadly in line with what Miss W understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I’m satisfied that was as a result of dishonest deception.

Miss W was making payments to J for the renovation of her bathroom, and there isn’t anything to suggest Miss W didn’t think this was a legitimate purpose.

So, I’ve gone on to consider what purpose J, on behalf of N, had in mind and whether it was in line with what Miss W thought.

In reaching an answer on what purpose J had in mind, I’ve considered the wider circumstances surrounding N and J. The key information is:

- N had been a UK incorporated company since June 2019. They were dissolved in July 2024. N had a website at the time Miss W made her payments, and I haven’t seen any evidence that N or J weren’t legitimately operating in the plumbing industry when Miss W made her payments.
- Miss W says that the testimonials on N’s website which were supposed to be from previous clients were fake. But I haven’t seen any evidence that supports that claim.
- We’ve received third party information from the receiving bank, which I can’t disclose due to data protection laws. However, that information doesn’t allow me to safely conclude that it’s more likely than not the funds weren’t used for their intended purpose.
- Miss W has provided a court order from April 2023 which provided an Interim Debt Order in Miss W’s favour. However, that application was dismissed in August 2023.
- Miss W also provided police evidence in relation to a case brought against J. As a result, J was charged with two counts under the Communications Act 2003. This shows that J acted inappropriately, and that Miss W was the victim of unacceptable behaviour, but it doesn’t show any intent in relation to the payments Miss W made. For example, there aren’t any charges in relation to fraud or that show the funds weren’t used for their intended purpose.
- Miss W has referred to N’s website, which incorrectly said they were Gas Safe registered and approved by a separate company that vets tradespeople. But poor business practices or misrepresentation of skills or qualifications to do the job, doesn’t mean that the payments Miss W made meet the definition of an APP scam.

Having considered all of the evidence available, I’m not satisfied that I can fairly conclude that J or N took Miss W’s payments with a different purpose in mind. Or, that the funds Miss W paid to J or N, weren’t used for their intended purpose.

I understand that part of the agreed work wasn’t completed, and that Miss W wasn’t happy with the quality of the work that J did complete. However, the evidence suggests it’s more likely than not N and J took the payments with the intention of doing the work in the contract.

I appreciate that J walked off the job and refused to complete the contract, but that doesn't mean that Miss W's payments are covered by the CRM Code.

I'm not saying that Miss W hasn't suffered a loss, nor making a judgement as to whether N or J's business practices, workmanship or behaviour were acceptable. I'm only looking at whether I can fairly hold Nationwide liable under the CRM Code.

For the reasons given, I'm not satisfied the circumstances under which Miss W made her bank transfers meets the definition of an APP scam under the CRM Code. So, I can't hold Nationwide liable for Miss W's loss under the CRM Code.

Is Miss W entitled a refund for her credit card payment under section 75 of the Consumer Credit Act?

Section 75 says that in certain circumstances, Miss W can bring a claim against Nationwide as the credit provider if there's either a breach of contract or misrepresentation by the supplier of the goods (N/J).

Based on the evidence provided, I'm satisfied that Nationwide have fairly applied section 75 in offering to refund Miss W £346.58.

In considering the refund Miss W is due, I can't fairly say she is entitled to a full refund as work was completed by J. And it wouldn't be fair to put her in a better position than she would've been in if things hadn't gone wrong.

The dispute comes in, because Miss W says she was entitled to a 10% discount as set out on N's website and as discussed with J – which would've reduced the invoice quote of £6,000. But this isn't documented in the contract, or in the chat Miss W had with J. And, we don't have any evidence that shows the discount on N's website. So, I'm satisfied in these circumstances that Nationwide have acted fairly by using the cost of £6,000 as set out in the invoice provided.

Is there any other reason I can fairly ask Nationwide to refund Miss W?

I've also thought about whether Nationwide could've prevented Miss W's loss when she made the payments.

There is an obligation on Nationwide to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. In situations where potential fraud is identified, I would expect Nationwide to intervene and attempt to prevent losses for the customer.

Having considered the size of the payments and the information available at the time Miss W made the payments, I'm not satisfied that Nationwide should've identified a potential risk of financial harm. On that basis, I wouldn't have expected them to intervene when Miss W made the payments.

But, even if I thought Nationwide should've intervened, I'm not satisfied that it would've prevented Miss W's loss. I say this because at the time Miss W made these payments, I think it's unlikely any information Miss W would've given in relation to questions asked by Nationwide would've suggested that she might be the victim of a scam. It wouldn't be for Nationwide to interrogate or investigate J or N as a tradesperson and I can't apply hindsight or information that becomes available at a later date, when thinking about whether intervention would make a difference.

So, I'm not satisfied that I can fairly hold Nationwide liable for Miss W's loss or ask them to refund any more than they've already offered.

#### The customer service Miss W experienced

Nationwide have acknowledged that Miss W didn't experience the level of customer service that she should have. It's clear that Miss W had to repeat herself in calls and that Nationwide staff weren't accurately recording the information they'd received from Miss W. Nationwide also weren't clear about evidence they had received and that it had been considered in relation to Miss W's fraud claim.

I agree that Miss W didn't receive the service she should've from Nationwide and this would've added to her distress at an already difficult time. But, poor service by Nationwide doesn't mean that Miss W is entitled a refund in relation to her fraud claim and compensation isn't determined by the loss she's experienced.

Compensation awards are modest and are based on the impact of Nationwide's actions on Miss W. Miss W feels that due to Nationwide's actions she has experienced consequential loss as she used the courts to try and recover her money from N. But, as I'm satisfied that Nationwide fairly considered her fraud claim and the offer they made was reasonable. I'm not satisfied that I can hold Nationwide liable for Miss W's court costs. I also can't hold Nationwide responsible for the distress caused to her by J.

Having considered the poor service Miss W received, I'm satisfied that the £200 compensation offered by Nationwide is fair.

#### In summary

I'm really sorry that Miss W has been subjected to abusive and threatening behaviour by J, and the serious impact this whole situation has had on her wellbeing. But I'm not satisfied that I can fairly ask Nationwide to pay anything further.

If material new information comes to light at a later date, for example charges or a conviction against N or J in relation to obtaining money from Miss W through dishonest deception, Miss W can ask Nationwide to reconsider her fraud claim under the CRM Code in relation to the bank transfers.

My provisional decision was that I didn't intend to uphold Miss W's complaint.

#### **Responses to my provisional decision**

Nationwide responded saying they had nothing further to add.

Miss W responded raising the following points:

- J had agreed to apply the 10% NHS discount, so we're using an incorrect invoice figure of £6,000.
- The figure of £1,431.58 is not correct, Miss W paid £1,941.57 to an alternative contractor to complete the work.
- Miss W has provided a copy of testimonials from N's website.
- Nationwide never offered Miss W a chargeback on the credit card payment, and they should have.
- In relation to fraud charges being brought against N or J, the police have admitted and apologised for failings in Miss W's case.
- Miss W only pursued J through the courts based on what Nationwide told her.
- Miss W believes she should be refunded £1,456.57 as she is still out of pocket for work not completed and goods/services not received.

Miss W also shared five pictures of her bathroom.

### **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 considered the points Miss W has raised, I have reached the same answer as in my provisional decision. I'll explain why.

- While we have a screen shot that says senior NHS staff can receive a 10% discount on request – there is no evidence on the invoice or the chats with J that a 10% discount was agreed or would be applied to the invoice total of £6,000. Initially J quoted Miss W £4,500 to £5,000 to do the work, but this was amended based on changes Miss W requested. I haven't seen anything that shows a 10% discount was agreed or applied to the cost quoted to Miss W.
- Miss W disagrees that the figure she paid alternative contractors to finish the work was £1,431.58. But I'm not satisfied that she has sufficiently evidenced this. On that basis, I'm satisfied that the refund Nationwide have offered to pay of £346.58 in relation to the credit card payment is fair.
- Miss W has provided evidence of testimonials on N's website, but she hasn't evidenced that these are false testimonials. Also, as explained in my provisional decision, misrepresentation by N or J about accreditation or membership doesn't mean that Miss W's bank transfers meet the definition of an APP scam.
- Miss W says Nationwide should've raised a chargeback. But I'm not satisfied that this had a likely prospect of success as J defended the APP scam claim that was raised with his bank. So, I can't fairly say Nationwide did anything wrong in not raising a chargeback in relation to the credit card payment.
- Miss W says the police have admitted to making errors in her case, however this doesn't show or evidence that J obtained Miss W's funds through dishonest deception. It is possible that new information may become available at a later date, in which case, Miss W can ask Nationwide to reconsider her fraud claim.
- Miss W is unhappy that Nationwide suggested she could pursue J/N through the courts, saying this has left her out of pocket. However, Nationwide told Miss W that they considered her fraud claim a civil dispute, which is why they didn't refund her. I don't think it was unreasonable for Nationwide to let Miss W know that the courts may be a way for her to pursue her losses against J or N.

Miss W wants Nationwide to refund her £1,456.57 to resolve her complaint. But I'm not satisfied that I can fairly ask Nationwide to pay her anything further.

Miss W hasn't provided evidence that satisfies me her bank transfers of £3,125 meet the definition of an APP scam or that I can fairly ask Nationwide to refund them. And, taking into account Miss W's response to the provisional decision, I'm still satisfied that it was fair for Nationwide to refund Miss W £346.58 in relation to her credit payment and to pay her £200 for the poor service she received.

I'm really sorry to disappoint Miss W, but I'm not satisfied that I can fairly ask Nationwide to refund her anything more.

### **My final decision**

My final decision is that I don't uphold this complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 11 February 2025.

Lisa Lowe  
**Ombudsman**