

The complaint

Mr and Mrs K are unhappy that Nationwide Building Society has decided not to refund them the money they lost, to what they believed was an Authorised Push Payment (“APP”) scam.

What happened

I issued my provisional decision on this complaint on 20 December 2024. The background and circumstances were laid out in detail in that and are well known to both parties, so I’ve only summarised the background briefly below.

In or around December 2022, Mr and Mrs K were looking to have some work done on their property. They were provided with a number of recommendations by their architect and entered into an agreement, with a builder (who I’ll refer to as “E”), to complete substantial work on their property.

Mr and Mrs K made payments to E, totalling £10,000. Nationwide intervened and warned Mr and Mrs K that it had concerns about the recipient account and went as far as saying that they would no longer transact with the beneficiary. But this intervention took place after the payments had been made.

Mr and Mrs K contested that Nationwide’s concerns and refusal to continue transactions with the builder should have prompted Nationwide to exercise caution and undertake further due diligence before allowing them to proceed with the payments.

Nationwide didn’t agree that it should be held liable. In summary, it said the payments were made to a legitimate trader and that it believes this matter should be taken up through the civil court system. It added that it wasn’t able to confirm why the second payment went through without being held. Nationwide said Mr and Mrs K had to balance the concerns that it had raised, with what they’d been told by several trusted people who had initially recommended the builder to them.

In my provisional decision, I explained that I was minded to say that the evidence suggested that Nationwide had concerns when the initial payment for £10 was made; those concerns were raised again by Nationwide when the payment for £9,990 was made. But I was persuaded the intervention here by Nationwide was insufficient, as it came after the payment was made, rather than before it.

As well as this, I said that I was satisfied the steps Nationwide took and the advice it gave, when it did intervene, changed the actions Mr and Mrs K went on to take – which was important in the individual circumstances of this case. I said that as I think it’s more likely than not the steps Mr and Mrs K took, in speaking to the builder and ending the relationship, would have happened sooner and importantly, before they had sent this money.

In summary, if Nationwide had intervened when it ought to have done - I didn’t think Mr and Mrs K would have gone ahead with this payment and so the money wouldn’t have been lost. I explained it was for this reason that I thought Nationwide had caused the loss.

I also thought about what would have happened had Nationwide not intervened at all. Having done so, I was persuaded that there was nothing to suggest here that the work wouldn't have gone ahead as planned (and that it was speculative to suggest otherwise).

I noted that Nationwide maintained this was a civil matter, that this was not a scam and so this should be taken up through the civil courts system. I said that while I was no expert in these matters, I think a reasonable argument from the defence here would be that the £10,000 was a deposit (which it was) and that it was not refundable as Mr and Mrs K withdrawing at this point had led the defence to lose out on other opportunities of work. I said I thought there would be a limited prospect of success here for Mr and Mrs K.

In summary, irrespective of whether what had happened here was a scam, it was Nationwide's failure, in not intervening before the payment was made, that led Mr and Mrs K to make a payment (which they have now lost), that they otherwise wouldn't have made.

I therefore thought that the fair and reasonable outcome here was for Nationwide to refund Mr and Mrs K this loss, along with interest.

Mr and Mrs K responded and accepted the findings within my provisional decision. Nationwide responded, but it disagreed. In summary, this was because it;

- maintained that Mr and Mrs K have a chance of success on taking this claim to court to try and retrieve their deposit (as the contract Mr and Mrs K had with the builder didn't state that the deposit was non-refundable)
- said it appears the builder is acting unlawfully in holding on to the deposit and doesn't believe it is liable in respect of the supposed breakdown in relations between Mr and Mrs K and the builder
- said that the fact the ombudsman, in the provisional decision, has indicated that Mr and Mrs K have a limited prospect of success should not in any way mean Nationwide are liable
- believes there is nothing to suggest the building firm have acted fraudulently in asking Mr and Mrs K to pay a deposit – instead Mr and Mrs K have made somewhat of a poor choice of firms to transact with, which isn't covered under the Contingent Reimbursement Model (CRM code)

Nationwide added that imposing a liability on Nationwide, in the circumstances where it warned its customer about legitimate scam concerns, would discourage firms from intervening in payments they suspect to be a scam.

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 thank both Mr and Mrs K and Nationwide for their responses to my provisional decision. Having considered these carefully, I see no reason to depart from the findings in my provisional decision and I am of the opinion that Nationwide should refund Mr and Mrs K in line with my recommendations. As the reasoning is largely the same as detailed in my provisional decision, I'll focus on addressing the points raised by Nationwide in its response.

Nationwide has said that it believes Mr and Mrs K would have a chance of success, if they chose to take this matter to court to try and retrieve their deposit. I'm still not persuaded that Mr and Mrs K would have a great prospect for success here. But, as I said in my provisional decision, I am not an expert in those matters.

But in any event, irrespective of what ‘chance of success’ Mr and Mrs K may have in court, Mr and Mrs K are entitled to choose to complain about Nationwide and I have found that Nationwide did not act fairly and reasonably in the circumstances of this case. And whilst it is a possibility that Mr and Mrs K may also have cause to complain through other channels, I can only consider the complaint in front of me and I’m satisfied Nationwide, for the reasons already explained, could have prevented the loss Mr and Mrs K suffered.

The crux of this complaint is that Nationwide had serious concerns about the beneficiary account to which Mr and Mrs K were attempting to make a payment, so much so that they had blocked an earlier payment for £10. Considering the concerns that Nationwide had, it is fair and reasonable to have expected it to intervene and to have expressed the concerns it had *before* Mr and Mrs K went ahead with a further payment of £9,990, rather than after it. This is especially so, given that all of the evidence I’ve seen lends itself to Nationwide having known about these concerns before Mr and Mrs K made both of the payments.

Nationwide’s omission, in not taking the steps I think it ought to have done before Mr and Mrs K made the payment for £9,990, rather than after the payment was made, has led them to proceed to make a payment, that I’m persuaded they would not otherwise have made.

In the individual circumstances of this case, the evidence clearly supports that Mr and Mrs K would have acted differently when faced with the advice that Nationwide later gave and its assertion that it would refuse to transact with the beneficiary account any further. Mr and Mrs K followed Nationwide’s advice in not making any further payments to the builder and in trying to recover the money they had already paid. It follows that, on the balance of probabilities, Mr and Mrs K would have followed this advice similarly if they had received it sooner and they wouldn’t have gone ahead with the payment.

Putting things right

For reasons explained above, I uphold this complaint and now order Nationwide Building Society to;

- Refund Mr and Mrs K £10,000
- Pay 8% interest on this amount, from the date of payment to the date of settlement.

My final decision

My final decision is that I uphold this complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K and Mrs K to accept or reject my decision before 14 March 2025.

Stephen Wise
Ombudsman