

The complaint

Mr B and Miss G complain that National Westminster Bank Plc won't refund the money they say they lost to a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of what happened here.

Mr B and Miss G engaged the services of a builder – which I'll call K – to do some work at their home. Over several months Mr B and Miss G made payments to K totalling over £90,000. Around £50,000 of that amount was payments from their NatWest accounts. They were told these payments were for labour and materials.

In September 2023, after some back and forth between Mr B and K about the progress that had been made and the ongoing costs of the project, K issued Mr B and Miss G with a termination notice ending the agreed contract of works. Mr B says he has since asked for evidence of the materials that were bought, but has not received it. Mr B and Miss G feel that K has intentionally scammed them, they say that K set out to defraud them from the start of the project and so feel they should be entitled to a refund of the sums they sent to K.

NatWest has said it feels this issue is a civil dispute between Mr B, Miss G and K, so it has declined to refund their loss.

Unhappy with NatWest's response, Mr B and Miss G brought their complaint to this service and one of our investigators looked into things. Initially they agreed with NatWest that this was most likely a civil dispute, but when Mr B provided some evidence that other people had similar experiences with K, and that K had a number of CCJ's recorded against it, the investigator changed their mind. They felt there was evidence to suggest K had scammed Mr B and Miss G, so they recommended that NatWest refund their loss in full.

NatWest disagreed with these findings, so the case was passed to me for a decision.

I issued my provisional findings on this complaint on 19 February 2025, explaining why I felt that it was fair for NatWest to consider this complaint as a civil dispute rather than a scam, and therefore why I did not consider that it needed to refund Mr B and Miss G's loss.

Mr B and Miss G have provided numerous further submissions following that provisional decision, they maintain that K's actions indicate that it was operating 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.

In my provisional decision I explained the following:

"I am currently intending to find that this is most likely a civil dispute, rather than a scam, and so I won't be asking NatWest to refund any of Mr B and Miss G's loss. I do appreciate how disappointing this will be for Mr B and Miss G but, whilst I'm sorry to hear of what's happened to them and their home, I don't think I can fairly hold NatWest liable for their loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I can quite understand why Mr B and Miss G feel that they have been scammed, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties and for a dispute to exist.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which NatWest has signed up to and which was in force at the time Mr B and Miss G made these payments.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether NatWest therefore ought to reimburse Mr B and Miss G under the provisions of the CRM Code.

The CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"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."

And it defines an APP scam as:

...a transfer of funds executed across Faster Payments...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.*

NatWest is of the opinion that Mr B and Miss G's circumstances fall under the definition of a private civil dispute, rather than an APP scam, and I agree that this is most likely the case here. I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that K set out with an intent to defraud Mr B and Miss G from the outset. It seems more likely to me that this is a dispute about a builder failing to complete the work agreed, or to provide a refund when they ended their contract.

I understand that the work Mr B and Miss G engaged K to do was not finished, and that they have concerns about some of the work that was done, but whilst this would clearly be unacceptable to Mr B and Miss G, this doesn't mean that their circumstances meet the high legal threshold for this to be a scam where I would need to be satisfied that it was the builder's intention to deceive from the start.

I do acknowledge that there are various issues that Mr B has brought to our attention which suggest that K was not acting professionally. Specifically, Mr B has provided evidence that K was claiming to be a member of a professional body when that was not the case, that there are numerous CCJ's recorded against K, that other individuals appear to have had similar

issues with K's work, and that K has failed to provide any evidence of funds being used to purchase materials. But while this evidence certainly could be an indication that K was not acting professionally, I don't feel it is enough to say that K was acting fraudulently or set out with the intent to defraud Mr B and Miss G.

I say this because of the weight of evidence showing that K did do extensive works at Mr B and Miss G's home. I have also seen the correspondence between Mr B and K, which suggests to me that K was trying to work with Mr B and Miss G to complete the project but that there was a breakdown in the working relationship when they began to disagree over costs. K also appears to have engaged with building control, and some of the work was signed off as being to a satisfactory standard. And ultimately K did issue a formal termination of the contract. In my experience, this behaviour from K is not indicative of a scammer. Overall, there would've been no obvious benefit to K in turning up on site over a number of months and completing any such work, or in it engaging with Mr B in such detail about the plans and how they could be completed.

And while there have been some poor reviews online of K's work, and does appear to be at least one other individual (who contacted Mr B directly) who has also had a poor experience with K, I can't discount that there also appear to be positive reviews of K's work.

I appreciate that Mr B says he has only been given one 'invoice' for materials (the windows) and that the window company has said it had no order associated with that invoice. But as Mr B has himself noted, that document appears to have been a quote only, and I can see it was issued very early on in the project. The text conversation between Mr B and K suggests that significant changes were made to the plan for the windows and doors after that quote. I therefore think it is very possible that a new quote was provided under a different reference (or perhaps even with a different supplier), so I don't think the comments from the supplier detailed on that original quote hold much weight here.

In addition, whilst I am unable to share details about a third party and the nature of their relationship with their bank, the evidence I've seen, regarding the beneficiary account, indicates that K's account was legitimate and the bank hasn't said it had any particular concerns about how the account was being operated prior to Mr B and Miss G making their payments.

I'm also aware that K had been running for some time when Mr B and Miss G engaged it's services, and is registered on Companies House. I can see that there have, on more than one occasion, been applications to strike K off the register, but that does not mean that K was not operating legitimately when the events that are the subject of this complaint took place, rather than simply being a business that does not manage itself well. I also must bear in mind that, while Trading Standards and the police have apparently been involved in looking at K's activities, I've not seen anything to show that either of those entities has made any official finding that K has acted fraudulently, and Trading Standards have gone so far as to say they believe this is a civil dispute between Mr B, Miss G and K.

Overall, I must make my decision based 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 that other factors ultimately meant the building work wasn't completed. I haven't seen evidence to persuade me that the builder set out from the beginning with the intent to defraud Mr B and Miss G.

I appreciate Mr B and Miss G do not agree, but this situation doesn't display the hallmarks most typically associated with a scam. This is not to say that there is no issue at all between Mr B, Miss G and K. Clearly there is. But this type of dispute isn't something that the CRM Code covers.

I know this will be a huge disappointment to Mr B and Miss G. I appreciate how they feel about this case, and that the work they paid for was not completed to their satisfaction. And some of the information they have sent us does suggest that K wasn't acting professionally, but that does not mean that this was a scam, rather than a case of poor and unprofessional business practices.

I sympathise with the position Mr B and Miss G are in, and I'm in no way saying that they don't have a legitimate grievance against K, nor do I wish to discount the significant impact all this has had on them. But, for the reasons I've explained above, I do not consider that the payments in dispute here are covered under the CRM Code, or that it would be fair to hold NatWest responsible for the money Mr B and Miss G have lost."

NatWest has made no further comments in response to my provisional decision. Mr B and Miss G have provided several further submissions, with additional evidence, that they feel supports their position that K acted fraudulently.

I understand Mr B and Miss G have strong views about what has happened. And I want to assure them that I've considered everything they've provided to support the complaint very carefully. I have read their detailed responses to my provisional decision, and have reviewed all the evidence on the file. However, my findings focus on what I consider to be the central issues, and so I won't be addressing every point raised in detail. I mean no disrespect by this, but the purpose of my decision isn't to address every single point the parties have raised. My role is to consider the evidence presented by all parties and reach what I think is a fair and reasonable decision overall based on the facts of the case.

I think I should also make it clear I am in no way finding in favour of K here. The complaint I am considering is against NatWest. Just because I have deemed this a civil matter and not a scam that does not mean that I am supporting K, or saying K did nothing wrong here. I cannot decide the case between Mr B, Miss G, and K - this is the whole point of my decision, that this is a civil dispute. And the reason we can't deal with matters like this is quite simply we are not set up for this – I cannot call witnesses or demand a third party such as K give his version of events. I can only look at Mr B and Miss G's dispute with NatWest, and determine whether I think NatWest has acted fairly and reasonably.

I appreciate that there is evidence to show that K was not being honest about their qualifications or experience, but that does not mean that what happened here meets the definition of a scam as set out in the CRM Code. I simply do not feel that there is adequate evidence to show that K never intended to do the work Mr B and Miss G had paid them for. I consider that the evidence I have seen demonstrates the opposite, that K did intend to carry out the work, and in fact did complete some of the work they had been engaged to do. And while I acknowledge what Mr B has said about the groundworks K carried out being only one part of the project, these groundworks do appear to have been extensive.

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 that other factors ultimately meant the building work wasn't completed. I don't think K set out from the beginning with the intent to defraud Mr B and Miss G, so I cannot conclude that they have been the victim of a scam here.

I note what Mr B has said about NatWest's failure to intervene in the payments he was making to K, but given that I'm supportive of NatWest's decision to conclude this is a civil dispute, there isn't any basis upon which any further intervention ought reasonably to have caused concern with the payments. So, I can't fairly criticise NatWest for not having done more in these circumstances.

I also note that another bank from where Mr B and Miss G made payments to K did refund their loss, saying it was satisfied they had been scammed. But that was their decision to make, I am satisfied that the evidence I have seen – from Mr B and Miss G, from NatWest, and from the receiving bank – does not demonstrate that a scam has taken place here.

Lastly, I acknowledge the significant evidence Mr B has provided of his mental health, and how he feels this made him vulnerable to being scammed by K. But it is only under the CRM Code that an individual's vulnerability would be taken into account when considering whether a refund is due in a claim like this, and as explained above, the CRM Code does not apply in this case.

So, with all this in mind, I remain satisfied that it was fair for NatWest to decline to refund Mr B and Miss G's loss under the CRM Code. I know this will be hugely disappointing for them, and that this whole situation has had a very significant impact on their lives. But while I have huge sympathy for Mr B and Miss G, that does not mean that I can fairly hold NatWest responsible for their loss.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss G to accept or reject my decision before 10 April 2025.

Sophie Mitchell
Ombudsman