

The complaint

Mrs B complains that Nationwide Building Society won't refund the money she lost when she was the victim of what she feels was a scam.

What happened

The circumstances of this case are well known to both Mrs B and Nationwide, so I won't go over them in detail here and will just provide a brief summary of some of the key events.

Mrs B was looking to get some building work done at a property. She got quotes from a number of builders and decided to use what she thought was a building company with a good reputation locally. She says she was told the builder she was dealing with had taken over and rebranded the company, but it now appears they had previously worked for the company but now set up a new company of their own.

Mrs B signed a contract with this new company, the builder started the work, and Mrs B made a number of payments over the following year to several bank accounts the builder gave her. But around a year after the work had started, Mrs B noticed some of the materials that had been delivered were now missing and the building inspector then told her the work had not been done properly. When she asked about this, Mrs B says the builder started acting threateningly towards her and demanding more money. She then also found out the builder hadn't taken over the company she thought she was dealing with, but had set up a new one. And ultimately the work wasn't completed and Mrs B reported the payments she had made to Nationwide as a scam.

Nationwide investigated but said Mrs B had paid who she thought she was paying and it wasn't convinced the builder had intended to defraud her. So it didn't agree to refund the payments she had made. Mrs B wasn't satisfied with Nationwide's response, so referred a complaint to our service.

One of our investigators looked at the case. They said they felt this was a civil dispute between Mrs B and the builder, as they weren't persuaded the builder had set out with the intention to scam her from the outset. So they didn't think Nationwide should have to refund the payments Mrs B had made. Mrs B disagreed with our investigator, so the complaint has been passed to me.

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 done so, I don't think it would be fair to require Nationwide to refund the money Mrs B has lost. I'll explain why below.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the

customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Nationwide is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam. So in order to determine whether Nationwide should refund the money Mrs B lost, I need to consider whether her circumstances fit the definition of a scam from the CRM code.

Mrs B has made a number of arguments about things the builder did and how these fit the dictionary or legal definition of a scam. But I must consider whether the circumstances fit the definition of a scam as set out in the CRM code, not any other definition, as this code is where Nationwide's obligation to refund the money she has lost would come from.

Mrs B says she was misled into using this builder. She says she wanted to use a specific company with a good reputation locally and this builder told her they had taken over and rebranded the company she intended to use. But it now appears they had instead set up their own company using a similar name. Mrs B says she wouldn't have used this builder if she'd known they were not connected to the company she intended to use.

I appreciate that Mrs B was misled about the builder's connection to the company she intended to use, but I don't think this fits the definition of a scam from the CRM code. The code says a scam will include where *"the customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person"*. But Mrs B had met and spoken with the builder a number of times and did intend for the money to go to them – albeit because of their connection to the other company. And the money went to the correct account details the builder gave her. So I don't think this fits the definition of a scam from the CRM code.

Mrs B has also said the work the builder did was of poor quality, and she thinks they only completed the work they did in order to get more money from her and that they never intended to complete the work they agreed.

The CRM code says that it doesn't 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 builder did start work on the property, and appears to have been working there for some time. The builder also appears to have done a significant amount of work at the property as, from the reports Mrs B has sent us from other builders or engineers, the work done was valued at between £90,000 - £100,000 even after any necessary remedial work was taken into account. But I'd usually expect a scammer to do as little work as possible in order to get the maximum profit in the shortest period of time. So the builder did more work than I'd expect from a scammer who never intended to complete the work.

The banks the payments were sent to have also told us that they haven't had any other scam reports made against the builder's accounts. And there were no concerns about the activity on the accounts or blocks placed on the accounts. But scammers usually target a number of people at once, in order to make as much money as possible before the scam is uncovered. So I'd expect to see other scam reports to the builder's bank around the same time if they were operating a scam. And from what I've seen of the activity on the accounts, they appear to have been run as I would expect legitimate accounts to have been.

Where the evidence available is incomplete or inconclusive, 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.

Mrs B has provided significant evidence that the work the builder did was of poor quality and significant remedial work is now necessary before the intended work can be completed. But I think this suggests the builder didn't have the capability to do the intended work to the standard Mrs B expected, rather than that they never intended to complete the work. So I think this is a civil dispute between her and the builder about the quality of the work she received, which isn't covered by the CRM code.

Mrs B has also mentioned issues about the delivery and return of materials, the builder continuing to use the name of a company that had been dissolved, and threatening and bullying behaviour by the builder. But while these may suggest the builder wasn't acting as you might hope a respectable builder would act, I don't think they fit the definition of a scam from the CRM code.

I appreciate how Mrs B feels about this case, and that the property was left unfinished and she now has to arrange other builders and pay significant extra sums to finish the intended work. I sympathise with the position she has found herself in, and I'm in no way saying she did anything wrong or that she doesn't have a legitimate grievance against the builder.

But I can't look at whether the builder has acted correctly or at any action she could take against them. I can only look at whether Nationwide should be held responsible. And, for the reasons I've explained above, I don't think what has happened fits the definition of a scam as set out in the CRM code or that it would be fair to hold Nationwide responsible for the money she's lost.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 12 October 2023.

Alan Millward
Ombudsman