

The complaint

Ms C 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

In mid-2022, Ms C was looking to purchase a buy-to-let property and met an estate agent on a social media platform. Ms C was interested in a property the estate agent recommended, so the estate agent introduced her to a second estate agent and they both showed her around a property. Ms C initially decided not to proceed, but then later agreed to buy the property and so paid a deposit of £2,000 from her Nationwide account to the bank details the second estate agent gave her for the property developer.

The next day, Ms C decided she didn't want to proceed with the purchase and so emailed both estate agents asking for her deposit to be returned. But the second estate agent responded, saying that the deposit was non-refundable. Ms C responded that the deposit form she had filled in didn't say the deposit was non-refundable, but the estate agent still refused to refund it. So Ms C reported the payment to Nationwide as a scam and asked it to refund the money she had lost.

Nationwide investigated but didn't think the evidence suggested there had been any fraudulent activity or that the payment Ms C made was the result of a scam. It said this was a private, civil dispute between Ms C and the estate agent or property developer about the return of her deposit, and didn't agree to refund the payment. Ms C wasn't satisfied with Nationwide's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought both the second estate agent and the property developer were likely operating as genuine businesses at the time, and so this was a civil dispute between them and Ms C – rather than a scam. So they didn't think Nationwide should be responsible for refunding the payment. Ms C 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 payment Ms C made. I'll explain why below.

Banks are expected to make payments in line with their customers' instructions. And Ms C accepts she made the payment here. So while I recognise she now feels her deposit has not been refunded when it should have been, she did authorise the payment. And so the starting position in law is that Nationwide was obliged to follow her instructions and make the payment. So Ms C isn't automatically entitled to a refund.

There are certain activities banks are expected to carry out to try to protect their customers from falling victim to scams, and certain protections in place for customers who do fall victim to scams. But, before looking at whether Nationwide has done what we'd expect it to do or whether these protections apply, I must first be satisfied that Ms C has been the victim of a scam.

Ms C has put forward a number of arguments for why she feels she has been the victim of a scam, including about the definition of both a scam and a dispute. But the dictionary definitions of a scam or a dispute aren't necessarily the correct test here. And, when looking at what we expect banks to do, I think the relevant test for whether this was a scam is whether the people she was dealing with set out with the intent to defraud Ms C out of her money.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Both the second estate agent, who sent Ms C the deposit form, and the property developer, who Ms C paid the deposit to, appear to be genuine companies. They are both registered on the government's register of limited companies, and both appear to carry out work related to the type of property purchase Ms C was trying to make. The people Ms C spoke to at the second estate agent also appear to be genuine employees of the company. And I think it's unlikely these two genuine companies would be working together to set up a scam, particularly involving what, in comparison to common property transactions, would be a relatively small amount of money. So I think it's likely this was a genuine property purchase, rather than a scam.

Ms C has sent us copies of the deposit forms she was sent. And I accept it appears that the second form she signed and returned does not mention that the deposit is non-refundable. But, even if the property developer were legally required to refund her deposit, I don't agree that this meets our definition of a scam. I still don't think the property developer set out with the intention of defrauding her – I think it's more likely the property developer wanted to continue with her purchase of the property. I think this more closely matches what we would consider a private, civil dispute – which is where, for example, a customer has paid a legitimate supplier but is then dissatisfied with that supplier. And I don't think it would be fair to require Nationwide to refund money that is the subject of a private dispute between Ms C and the estate agent or property developer.

Ms C has said she asked the first estate agent whether the deposit was refundable, and was told it was. And I appreciate that she says she only went ahead on the condition that the deposit could be refunded, but I still don't think this meets our definition of a scam. Even if this first estate agent misled her about whether the deposit was refundable, I don't think the estate agents or the property developer set out with the intention of defrauding Ms C out of her money. I still think this was likely a genuine property purchase where the people she was dealing with intended to go through with the sale.

Ms C also says the estate agents misled her about the postcode of the property she was looking at, and about which floor in the building it was on. But, firstly, I've not seen clear evidence that this was deliberate deception by the estate agents – rather than just a mistake or a change in what was being discussed. And, secondly, Ms C had the correct information about the post code and the floor before she made the payment – so the estate agents can't have been using the incorrect information to try to trick her into going ahead at that point.

Ms C has also mentioned that her solicitor's details were added to the deposit form without their knowledge or consent, and that she should have been informed about the deposit being

non-refundable in advance. But, while these might suggest the second estate agent or property developer were acting unprofessionally, I still don't think they suggest they set out with the intention of defrauding Ms C or that this was a scam.

I appreciate how Ms C feels about this case, but 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 estate agents and property developer here were attempting to operate as legitimate businesses at the time. I don't think they set out from the beginning with the intent to defraud Ms C, or that she has been the victim of a scam here.

So I don't think the protections in place for victims of scams apply here, or that it would be to require Nationwide to refund the money Ms C has lost.

I sympathise with the position Ms C 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 estate agents or the property developer. And I understand she's said she will find it difficult to pursue the first estate agent or the property developer directly. But I can only look at Nationwide's responsibilities and, for the reasons I've explained above, I don't think it would be fair to hold Nationwide responsible for the money she lost.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 15 December 2023.

Alan Millward
Ombudsman