

## **The complaint**

Miss 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**

In late 2020, Miss B was looking to renovate her property and so searched for builders on a trade association website. She found a builder she was interested in, met with them and was provided with a quote for the work. Then, in February 2021, Miss B decided to go ahead with the work and so paid a deposit to the builder. It was agreed the work would start in March 2021, lasting for 12 weeks, and Miss B would make weekly payments to pay the remainder of the balance.

The builder started the work as agreed, and Miss B made the weekly payments. But then in May 2021, after the final weekly payment had been made, the builder told Miss B that there would be a delay in completing the work. Miss B says the builder then stopped working on the property and later asked for more money to complete the work. Miss B made a few further payments to the builder over the following months, and she says some occasional further work was done at the property. But ultimately the work wasn't completed and Miss B found out the builder was seeking insolvency. So she reported the payments she had made to Nationwide as a scam and asked it to refund the money she had lost.

Nationwide investigated but said that as the builder had started the work and met with Miss B regularly, it felt this was a private civil dispute between them. So it didn't agree to refund the payments Miss B had made. Nationwide did pay Miss B £25 compensation for giving her incorrect information about the outcome of her claim. Miss 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 Miss B and the builder, as they weren't persuaded the builder had set out with the intention to scam Miss B from the outset. So they didn't think Nationwide should have to refund the payments Miss B had made. Miss 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 Miss B has lost. I'll explain why below.

In broad terms, the starting position at law is that a firm 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.

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 or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier. So in order to determine whether Nationwide should refund the money Miss B lost under the CRM code, I need to consider whether she has been the victim of a scam – or, in other words, whether the builder set out from the beginning with the intent to defraud her.

Miss B says she found the builder on a trade association website, and that the builder had won awards with the trade association and had a number of good reviews on the website. But this isn't how I would typically expect a scammer to get in contact with someone, and I wouldn't expect a scammer to be able to arrange these kinds of awards or reviews.

The builder started the work at Miss B's property at the agreed time and appears to have been working there for a number of months before there were significant concerns about the work being done. And from Miss B's descriptions of the work that was done, it appears the builder did a significant amount of work, and more than just destructive work – including removal of a wall and construction of a new one, painting of walls and woodwork, installing carpet and wood flooring and installing toilets, sinks and showers. Whereas I'd usually expect a scammer to do as little work as possible in order to get the maximum possible 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 reasons the builder gave Miss B for the delays and the increase in costs, such as supply issues and the global pandemic, also seem plausible and I don't think these necessarily suggest the builder was trying to scam her. And Miss B was able to contact the builder after she'd made most of the agreed payments, which I also wouldn't expect from a scammer who never intended to complete the work.

The bank the payments were sent to has also told us that it hasn't had any other scam reports made against the builder's account and had no concerns about the activity on the account. And from what I've seen of the activity on the account the money was sent to, it appears to have been run as I would expect a legitimate account to have been.

I appreciate how Miss B feels about this case, and that her property was left unfinished and she now can't afford to finish the intended work. And some of the information she had sent us does suggest the builder wasn't acting legitimately, such as the apparently incorrect statements and misleading paperwork the builder provided relating to insurance Miss B would be covered by.

But I must apply the definition of a scam as set out in the CRM code, even though it may not be exactly the same as the legal or criminal definition of fraud Miss B has mentioned. And, 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. I don't think the builder set out from the beginning with the intent to defraud Miss B, or that Miss B has been the victim of a scam here.

So I don't think the payments Miss B made to the builder are covered under the CRM code, or that Nationwide should be required to refund the money she lost.

Miss B has mentioned the possibility of getting quotes to show how much completing the remaining work would cost. But I don't think these would change the outcome of this complaint as the fact that the work wasn't completed, or how much it would cost to complete, is not in dispute.

I sympathise with the position Miss B 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, for the reasons I've explained above, I don't think it would be fair to hold Nationwide responsible for the money she's lost.

Nationwide has paid Miss B £25 for the incorrect information it gave her about the outcome of her claim. And I think this offer is fair and reasonable in the circumstances.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 14 September 2023.

Alan Millward  
**Ombudsman**