

## **The complaint**

Mr and Mrs A are unhappy about Nationwide Building Society's (Nationwide) decision not to refund the £23,500 they paid for building work.

The money was sent from a joint account – but Mrs A has led the complaint – so I have mainly referred to her throughout this decision.

## **What happened**

The view of 17 November 2023 detailed the background to this complaint. So, I'll only provide a brief overview of some of the key events here. Mrs A received a recommendation from her architect for a builder (I will refer to as K). On 22 February 2022, Mrs A paid £10,000 upfront as a deposit for building work. The payment was made to the builder's business partner's account. Work commenced the same month and in April 2022 the builder asked for a further £11,500 for materials. Mrs A paid £10,000 and £1,500 on 11 April 2022. Mrs A paid a further £2,000 on 23 May 2022.

At the time Mrs A believed she was paying for building services from K. However, Mrs A says K didn't finish the work and became increasingly more difficult to contact.

Nationwide deemed the matter a civil dispute. Mrs A says this was a scam and wants Nationwide to refund her.

Our investigator did not uphold the complaint. He thought Nationwide correctly classed this as a civil dispute between Mrs A and K and it isn't covered by the Contingent Reimbursement Model (CRM) Code. Mrs A did not agree, so the case has been passed to me for a decision.

## **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 deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

I'm sorry to hear about the situation Mr and Mrs A have been left in. They have paid out a considerable sum of money, yet it seems (from what they have said) the work is nowhere near completion. It appears the relationship has broken down to the extent that K is no longer in contact.

It's clear that Mrs A feels strongly that K has tricked her. From her perspective, K provided substandard half-finished work and ultimately didn't turn up to complete the job. But, I don't have the power to decide any dispute between Mr and Mrs A and K. My role is limited to looking at whether Nationwide has treated Mr and Mrs A fairly.

Nationwide didn't contract with Mr and Mrs A for the building project they wanted done, and I can't hold it responsible for any breach of contract or other failings on K's part. As a starting point in law, Mr and Mrs A are responsible for payments they've instructed Nationwide to make. Unfortunately, there's little protection available to them for bank transfer payments, like these.

Nationwide was under a range of other duties and obligations at the time, including to be on the lookout for payments that were unusual or out of character with the aim of preventing customers from falling victim to fraud and scams.

It's also a signatory to the CRM Code. In certain circumstances, that code can entitle a customer to be reimbursed by banks or building societies after they've fallen victim to an APP (authorised push payment) scam.

I've thought about whether Nationwide has any obligation to refund the losses as a result of the CRM Code that it has signed up to. But the CRM Code is explicit that it doesn't apply to

*“private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services ... but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier.”*

In order for me to conclude that the payment Mr and Mrs A made was part of an APP scam and that Nationwide should refund them, I'd need to be reasonably satisfied from the available evidence that K was not legitimate and had set out to defraud them from the outset. But I don't think, based on what I know, that I can safely conclude that.

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 for a dispute to exist. And unfortunately, businesses (such as K's business) can fail or be mismanaged such that contracts are breached and agreed goods and services aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

An APP scam is where a customer was deceived into making a payment to another person for what they thought were legitimate purposes but turned out to be fraudulent. In this context, that would mean that the very purpose for which K obtained the payments would need to be different to what Mr and Mrs A believed it was for, due to dishonest deception.

All things considered I simply can't safely conclude that K took Mr and Mrs A's money without ever having any intention of carrying out the work or purchasing the items they'd paid for. The evidence available to me simply isn't enough to support such a finding.

It seems to me that K was more likely than not operating as a legitimate builder. From what Mrs A has said she viewed other work completed by K which was satisfactory and there's no dispute that K did do some work for Mrs A here. And I haven't seen any evidence that K didn't use the money in the way it said it would – ie for building related work. K may have provided substandard work and not completed the job but that's not enough to say this was an APP scam.

I am aware there is an investigation into K and his 'business partner'. Whilst an investigation in relation to other matters might ultimately show that K's of poor character; it does not necessarily show in relation to *the specific transactions carried out* in this particular case that they were made to an APP scam. However, as the investigator mentioned – if material new evidence comes to light following the police investigation – Nationwide should consider if it makes a difference.

Overall, I think it's reasonable for me to consider that this is a civil dispute between Mr and Mrs A and K. Mr and Mrs A may be unhappy with the goods or service they have received. But I'm afraid there simply isn't enough evidence to support a finding that this was an APP scam.

I appreciate how frustrating and disappointing this answer will be. Mr and Mrs A have lost a lot of money as a result of K's failure to complete the agreed work. But I can't exclude the possibility that K entered the agreement in good faith, intending to fulfil the work and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't lead me to conclude it's more likely (than these alternative possibilities) that K intended to steal their money from the outset with never had any intention of fulfilling the arrangement in full or in part.

That means that I can't fairly hold Nationwide responsible for the loss suffered here by Mr and Mrs A. It also means I find that Nationwide had no ability or obligation to try and recover their money.

In saying all of this, I don't underestimate the impact this whole matter has had on Mr and Mrs A – I am sorry they have lost out seemingly through no fault of their own. It does seem their trust in K was misplaced and he has badly let them down. But that fault lies with K, not with Nationwide. And it's simply the case that I can't fairly tell Nationwide to pay them the money they've lost, because I don't think Nationwide has treated them unfairly or was otherwise at fault here.

In such civil matters, it is for Mr and Mrs A to pursue other ways to resolve their dispute, including contacting the police, Action Fraud and Trading Standards – which I understand they have done.

Ultimately there is insufficient evidence to persuade me that the conclusion Nationwide reached - at the time and based on the evidence available - was unfair or unreasonable. Based on all the information I've seen; I don't think Nationwide's decision to treat this as a civil dispute was unfair or unreasonable.

In addition, Nationwide doesn't have any duty or obligation to intervene in payments that are legitimate or to protect its customers from the impact of a bad deal. So, I can't fairly criticise Nationwide for not doing more when Mr and Mrs A made the payments.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 6 March 2024.

Kathryn Milne  
**Ombudsman**