

The complaint

Miss R and Mr R complain that Nationwide Building Society didn't reimburse them after they fell victim to a fraud.

As Miss R is the principal complainant here, for ease I will refer to her throughout my decision.

What happened

As both parties are familiar with the circumstances of this complaint, I have summarised them briefly below.

Miss R employed the services of a building contractor to complete an extension on a property.

Between October and December 2022, Miss R sent multiple payments from her Nationwide account to the contractor totalling circa £25,000. Miss R hasn't disputed these payments as the work was carried out as instructed.

In March 2023, Miss R instructed the contractor to buy radiators and flooring to be installed at the property and was quoted £941.99 for the purchase of the materials. Miss R paid this to the contractor on 31 March 2023 via her Nationwide account.

For several months after the payment was made, Miss R chased the contractor as the materials had not been delivered and the installation hadn't taken place. Several reasons were given by the contractor as to why they couldn't attend and eventually they agreed to refund the money paid. However, to date, Miss R hasn't received the materials paid for, nor a refund of the money.

Miss R reported the contractor to the authorities and made a fraud claim to Nationwide. After reviewing the information provided, Nationwide decided that it wouldn't reimburse in these circumstances. It pointed out that it was more likely than not that Miss R hadn't been a victim of fraud, but rather a civil dispute between both parties. As such, it felt it held no liability over the loss.

Miss R wasn't happy with Nationwide's handling of her claim. She argued that there was sufficient evidence to support the fact that the contractor was operating fraudulently, and this proved malicious intent. As Miss R disagreed with Nationwide's position, she approached our service for an independent review.

An Investigator considered the evidence submitted by both parties and concluded it was more likely than not that Miss R had been the victim of fraud. As such, they recommended that Miss R be reimbursed the funds lost.

Nationwide disagreed. It maintained its submission that this was more likely than not a civil dispute between both parties. It pointed out that:

- There was an existing relationship between both parties prior to the final payment, which saw the exchange of substantial sums of money for work, which was carried out.
- There was insufficient evidence via open-source research that the business was operating fraudulently, or that the contractor's bank account was being used illegitimately.

As Nationwide disagreed with the Investigator's opinion, the matter was passed to for a decision to be made.

On 22 February 2024 I issued my provisional findings to both parties. These were as follows:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting position in law is that Miss R will generally be considered liable for authorised payments. It's accepted that the payment in dispute here was authorised, so Miss R is presumed liable for it in the first instance.

However, Nationwide is a signatory to the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). Under the provisions of that code, firms are expected to reimburse customers who fall victim to fraud, subject to a number of exceptions.

The Code however is only applicable if I can be persuaded that Miss R did, on the balance of probabilities, fall victim to a fraud. The Code sets out 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..."

In addition, good industry practice requires that Nationwide be on the lookout for account activity that might be indicative of a fraud risk: among other things. On identifying a payment that is out of character or unusual, to the extent that it might have posed such a risk, it ought to intervene in a manner proportionate to that risk. However, much like the CRM Code, these requirements don't apply to genuine payments made to legitimate businesses.

Having considered the evidence provided by both parties I'm persuaded that Miss R was likely dealing with a legitimate business here. And for this reason, I don't find Nationwide has made an error in deeming this a private civil dispute between Miss R and the contractor. I will go on to explain why.

Prior to the transaction of £941.99 paid in March 2023, the contractor had carried out significant works at Miss R's property which she paid over £31,000 for. Around £25,000 of this was paid via her Nationwide account. Miss R has no dispute regarding these payments. She has not made a claim for the multiple high value transactions that were made to the contractor between October and December of 2022.

Had the contractor set out to defraud Miss R from the outset, I find it unlikely they would have carried out such substantive works, for a far higher value than the final payment made, in order to intentionally defraud her of those funds.

Furthermore, information from the third-party bank that held the account of the contractor doesn't suggest it was being used for illegitimate purposes. While I can't divulge detailed information regarding the receiving account, information we have obtained from that bank suggests that there were no concerns with its operation and that it was set up for business purposes. While I can't be certain what Miss R's money was spent on when it was paid into the contractor's account, there is nothing to suggest it was being used for purposes other

than what Miss R had paid the money for, as it was merely moved to several other accounts.

I've also seen no persuasive evidence that the business was operating fraudulently outside the findings I've made above. Miss R has argued that the contractor she was dealing with had incorporated and dissolved a number of companies before and after her experience with them. And she argues that this supports her assertion that the contractor was operating fraudulently. While I understand why Miss R believes this to be the case, there is an argument to be made that there could be legitimate reasons why someone might do this. I don't think this submission alone is enough to persuade me that the contractor was illegitimate and operating fraudulently. Especially when considering what I've said above regarding the substantive works carried out prior to requesting the payment in dispute.

Open resource research online also reveals no persuasive evidence the contractor, or the business they represented, systematically defrauded others. And this is supported by the information provided by the receiving banks regarding the way in which the account was being operated.

While it is difficult to know what the intentions of the contractor were at the time, I don't find there to be any persuasive evidence that the contractor was illegitimate, or that they set out with the intention to defraud Miss R from the outset. While Miss R is still without the materials she paid for, and hasn't been provided a refund, this doesn't in its own right mean she's been the victim of fraud: as there are multiple legitimate reasons why the contractor may have been unable to fulfil the agreement they had.

I understand that Miss R feels justifiably aggrieved by these circumstances. But where a fraud is unlikely to have taken place, and matters appear on balance to be a private civil dispute, Nationwide bears no liability for any loss suffered by its customer.

Should any substantive information come to light in future that supports Miss R's assertion that she's been the victim of fraud, she does have the right to present this evidence to Nationwide for a further assessment to be made."

Both parties were provided until 7 March 2024 to respond to my provisional findings with any further evidence and testimony.

Nationwide responded stating it had nothing further to add. But Miss R did respond disagreeing with the findings made. In summary she said:

- While the previous payments that were made were for work completed, these were asked for by the contractor after the materials were delivered and works carried out. So, this request for payment was out of character.
- No proof of purchasing the materials could be provided.
- The contractor told her that he'd moved "miles away", which she submits he would have known for some time.
- The contractor told her the goods would be delivered instead but was never provided a tracking number.
- The contractor ceased all communication, yet when Miss R found him via social media, he claimed this was due to him losing his phone. Miss M says that the contractor had her email address so couldn't understand why the loss of his phone would have impacted him responding.
- Proof of the contractor not being legitimate is supported by the County Court that has ruled in her favour regarding the claim.

As both parties have now responded to my provisional findings, I'm now in a position to issue my final 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.

As I've already set out my findings in detail in my provisional decision above, I only intend to respond to the additional points raised: in this case by Miss R.

Firstly, I'd like to reassure Miss R that the points she's raised in response to my provisional findings were considered as part of my assessment. I realise I may not have commented on every submission of evidence or testimony, but that is due to the informal nature of our service.

I can understand why each of the points Miss R has raised, when looked at holistically, do amount to a degree of suspicion for her against the contractor. But that suspicion isn't enough to persuade me that the contractor set out to defraud her from the outset.

Miss R has provided reasons for each of the above points being in support of the contractor's intention. But it's my submission that, equally, it can reasonably be argued that a legitimate explanation can also be given. For instance, the contractor messaged Miss R telling her they'd decided not to deliver the goods as it was too expensive, and therefore not economically viable.

I don't find a lack of a receipt for the goods paid for, or a change in the way the contractor decided to take payment from Miss R, compelling enough to counter the fact they'd already carried out substantive works at the property for a far higher value. Nor do I find a court judgement in Miss R's favour sufficient to support her assertion the contractor set out to defraud her. The contractor hasn't been criminally pursued for any fraud or theft offences that I'm aware of. The judgement merely rules in Miss R's favour that the payment made for the goods ordered are due to be refunded by the contractor as they weren't received.

Considering all the evidence I've seen so far, I'm not persuaded that the contractor did set out to defraud Miss R from the point the payment was made. While their intentions may have changed after this point, that isn't enough to support the application of the CRM Code in the circumstances of this complaint. The Code excludes payments such as this, as set out in my provisional findings.

Even if I were to consider this outside the scope of the CRM Code, I don't find Nationwide would have been able to prevent such a payment being made. I don't find the payment would have been out of character in terms of Miss R's usual account activity. But again, even if it were, any intervention by Nationwide would have been ineffective. Had Miss R disclosed the substantive works already paid for and carried out, it's unlikely Nationwide would have had any cause for concern and likely would have allowed the payment to be processed.

Due to above, Nationwide has made no error in the way it processed Miss R's payments or handled her claim. It therefore cannot be held liable for her loss.

As I've already highlighted in my provisional decision, should any further evidence come to light going forward that the contractor set out to defraud her, Miss R does have the right to bring that evidence to Nationwide for a further review. But as things stand, I'm persuaded that, on balance, this is a civil dispute between Miss R and the contractor.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R and Mr R to accept or reject my decision before 29 March 2024.

Stephen Westlake
Ombudsman