

## The complaint

Mr and Mrs B complain that National Westminster Bank Plc (“NatWest”) did not refund a series of transactions they say they lost to a scam.

## What happened

Both parties are aware of the circumstances of the complaint, so I won’t repeat them again in detail here. In summary, Mr and Mrs B were looking to get a structure built in their garden and eventually found a builder who I’ll call ‘X’ for the purposes of this decision.

X quoted Mr and Mrs B £40,000 for the job and in total they paid £25,880. However, after delays, building work that had to be condemned and a breakdown in communication, X did not complete the work and Mr and Mrs B felt they had been scammed. Mr and Mrs B have since found a number of other victims of X who have all paid money to him and received sporadic, sub-standard work that was not fit for purpose. X has since been investigated by Trading Standards and Mr and Mrs B have told us he is facing fraud charges.

Mr and Mrs B raised a scam claim with NatWest, who felt it was more likely this was a civil dispute, so they did not reimburse the lost funds. The complaint was referred to our service and our Investigator disagreed with NatWest’s outcome. They felt it was more likely a scam and that X had taken Mr and Mrs B’s money with the intention to defraud them and not provide the end product they had paid for. They therefore assessed the case under the Lending Standards Board’s Contingent Reimbursement Model (“CRM”) Code.

Having done so, they didn’t think either party had met their obligation under the code so recommended a 50% reimbursement of the losses, plus 8% simple interest from the date of the declined claim to the date of settlement.

NatWest agreed as a gesture of goodwill, however Mr and Mrs B felt they did all they could to protect themselves and asked for a full refund. The complaint was passed to me and I issued a provisional decision in which I recommended a full uphold. My provisional decision read as follows:

*NatWest has not continued to argue that this is a civil dispute between Mr and Mrs B and X following the view, so I see no reason to discuss this again in detail in this decision. In summary, I agree that Mr and Mrs B have been victims of a scam in the circumstances and that X took their money with no intention of providing the service they paid for. The work completed has been condemned and will have to be removed, and I don’t think X was ever qualified to be able to provide the level of service required. With this in mind, I have gone on to consider the transactions in question under the CRM Code.*

*The starting point in law is that Mr and Mrs B are responsible for any payments they have authorised themselves. However, the CRM Code requires a firm to reimburse victims of APP scams that fall under its provisions, unless a firm can demonstrate that one of the exceptions to reimbursement apply. In this case, it has been argued that Mr and Mrs B lacked a reasonable basis for believing that they were dealing with a legitimate builder who was providing a legitimate service. I’ve considered this in more detail.*

*Mr and Mrs B had suspicions early on that something was not right, and they confronted X about this. They had noticed he had 96 online reviews made by individuals who had never written a review before, even though his company had only existed for seven months. And they asked to speak with a previous customer to put their minds at ease. I therefore think Mr and Mrs B did have some concerns early on about the legitimacy of X and as a result of this, they raised their concerns with him.*

*I can see X had an answer for them when he said his business was an amalgamation of previous ones he had held, so while it appeared to be new, he was not new to building. And this is why he had so many reviews from individuals who had not left one before, as he had reached out to previous clients asking them to provide one. On balance, I don't think this explanation was unreasonable at that time. I note that X gave Mr and Mrs B five e-mail addresses of previous clients, so they could contact them and ask for a referral. However, Mr and Mrs B did not receive a response from any of them.*

*While I think this should have been concerning to Mr and Mrs B, as they had still not seen any evidence of previous work carried out by X, I am also conscious that he appeared to have a small business award which he advertised on his e-mail replies. This, along with the seemingly reasonable explanation as to why he had a number of one-off reviews on his page make me think Mr and Mrs B did have a reasonable basis of belief to believe X was legitimate at that point to pay the initial deposit of £10,000 to secure the start of work.*

*Following this, X requested a further £3,880 for additional steel beams as he had not accounted for the weight the building would need to hold. I am mindful that Mr and Mrs B had signed a contract that confirmed any additional costs not included in the initial quote would need to be paid. And while it could be argued X should have accounted for the additional weight when reaching the initial quote, I don't think it was reasonable that they paid the additional £3,880 on 12 July.*

*Following this, some builders did arrive at Mr and Mrs B's house on 19 July and they did carry out three days of work, for around four hours a day, but were pulled onto another job on the Friday. One of the builders said that they would leave the job if they did not get a plan soon, and despite promises that one would be provided, no such plans were ever received. Despite this, the first instalment of £6,000 was demanded by the company and Mr and Mrs B were warned the builders would not return if they did not pay this.*

*At that point, the builders had excavated a lot of the ground and had not carried out any specific building work that Mr and Mrs B could inspect. X had assured them he had already drawn up the plans and would come to deliver them soon, but excuses kept coming as to why he had not provided this yet. With the threat that the builders would not return if they did not pay, as per the contract, and with no evidence at that point that the builders were doing substandard work, I think it was reasonable that Mr and Mrs B made the first weekly instalment. While there had been some aspects that had given Mr and Mrs B cause for concern, I don't think there was enough at that point to say they had no reasonable basis to believe he was a legitimate builder who was providing a legitimate service. And as Mr and Mrs B had delayed making the initial weekly payment, it was then time for them to make the second, so I also think it was also reasonable they paid the second instalment of £6,000.*

*When it was time to make the third instalment, following delays due to weather, Mr and Mrs B had still not received plans and a new set of builders had started work which was not up to standard. Steel beams had been placed into the ground which were not level and there had been issues with communication between X and Mr and Mrs B. From this point onwards, they did not make any further payments to X and I think it is reasonable to say this is the point at which they no longer had a reasonable basis to believe X was legitimate. He continued to provide more excuses as to why work was not being completed or why it was*

*not to a reasonable standard, and there was no longer any reason as to why he had not produced official plans for the build.*

*I am therefore of the opinion that Mr and Mrs B did have a reasonable basis to believe they were making payments to a legitimate builder who was providing them with a legitimate service for the deposit, the additional cost of the beams and the first two weekly instalments. And it was only at the point at which the communication began to break down, the excuses built as to why plans had not been provided and the standard of work carried out was clearly sub-par that I think there was no longer a reasonable basis to think X was legitimate. And this was after Mr and Mrs B had stopped making payments.*

*Based on what I've seen so far, I therefore do not think there should be a reduction to the reimbursement, and Mr and Mrs B should receive a full refund of their loss, plus 8% simple interest from the date of the declined claim to the date of the settlement.*

Mr and Mrs B did not have any additional comments or evidence for me to consider.

NatWest responded and initially had concerns about whether this was a scam and asked for more information about what we had considered. Following this, they agreed to the recommendations set out in the provisional decision as a gesture of goodwill.

### **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 neither party has provided any further information for me to consider, and NatWest have agreed to honour the recommendation of a full refund, plus 8% simple interest from the date of the declined claim to the date of settlement as a gesture of goodwill, I see no reason to deviate from the findings set out in my provisional decision.

### **My final decision**

I uphold Mr and Mrs B's complaint in full and direct National Westminster Bank Plc to refund the £25,880 they lost to the scam, as well as 8% simple interest from the date of the declined claim to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 10 September 2024.

Rebecca Norris

**Ombudsman**