

The complaint

Mr H complains Santander UK Plc won't refund money he paid to someone who he employed to carry out landscaping work.

What happened

I issued my provisional decision on this complaint on 9 December 2021. I wanted to give both parties a chance to submit any further information before my final decision. That provisional decision forms part of this final decision and is copied below.

What happened

Mr H engaged the services of a third party I'll call Mr P. Mr P advertised himself as a landscape gardener on a popular social media platform. Mr H discussed the required work on the phone with Mr P and received a quote by post. Mr P offered his services a little cheaper than Mr H had found elsewhere, but he was also persuaded to go with Mr P because they shared the same professional background.

Mr H paid a deposit and the cost of materials up front – a total of £7,000. He made the payments to a bank account apparently held in the name of Mr P's partner. Mr P did turn up at Mr H's property, but carried out only very limited work – leaving some of his tools behind (and the garden in a poor state).

Mr H has tried various routes to recover his money – even obtaining a County Court Judgement (which was later set aside because his private investigator had incorrectly traced Mr P). He also established that other people who'd employed Mr P had suffered a similar experience.

There appears to have been some limited contact with Mr P after the works were abandoned. Messages provided by Mr H show Mr P was unhappy that Mr H had warned others about his services on the social media platform. There is also an exchange about the return of Mr P's tools, which had been left in Mr H's garden and were eventually collected by some associates of Mr P. Finally, in another exchange, Mr P says he can't complete the work because he has entered bankruptcy.

Mr H complained to Santander, but it felt the matter was a private civil dispute, rather than a scam, so it declined to provide a refund or look into things further.

Our investigator agreed with Santander. They thought that the circumstances meant that the case should not be considered under the provisions of the Contingent Reimbursement Model 'CRM' Code as it was a civil dispute.

Mr H disagreed, in summary he said:

- *Mr P had no intention of finishing the work*
- *Only a few materials were delivered and the value of the tools left in his garden*

was less than £200

- *The investigator failed to mention the other people that had the same experience*
- *Mr P had given a false name and address so he was impossible to trace*

As no agreement could be reached, the case was passed to me for a final decision.

What I've provisionally 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.

I think it's important to first point out that paying by bank transfer does not attract any of the same protections as paying by credit or debit card. The transactions were authorised by Mr H and therefore the starting point under the Payment Services Regulations 2017 is that Mr H rather than Santander will be responsible for them. Consequently, in order to ask Santander to reimburse Mr H, it's not enough to show that Mr P was in breach of contract or even misrepresented his services, but rather that either:

- *Santander ought reasonably to have recognised Mr H was at risk of financial harm from fraud at the time he was making the payments and their failure to intervene has caused his loss; or*
- *He ought to be reimbursed under the provisions of the Contingent Reimbursement Model "CRM" Code*

Of course, Mr H didn't know about the problems he'd have with Mr P at the time he made the payments. So, even if I were to conclude those payments were sufficiently out of character that Santander ought to have intervened and questioned them, it seems unlikely that either party would have concluded that a scam was taking place.

The CRM Code, introduced in 2019, is designed to reimburse victims of authorised push payment scams, but not civil disputes. Neither 'scam' nor 'civil dispute' are defined in the Code, but a scam can ordinarily be defined as a dishonest scheme. It suggests criminal wrongdoing intended to result in financial gain. On the other hand, civil disputes are generally those between private individuals about disputes which sit outside of criminal law.

So, in these circumstances, I need to consider whether Mr P set out to defraud – and of most relevance to that question is whether he ever had any intention of completing the agreed works. I think this is a very finely balanced case – it is very difficult to know what Mr P's intentions were. However, there are a number of factors which persuade me that Mr P had no intention to finish the work he started.

There's little about Mr P that can be found online now – just one or two traces of his landscaping business on social media. There's no website, no reviews and nothing about Mr P himself. I've also checked The Insolvency Register and there are no records under Mr P's name – demonstrating that he did not enter bankruptcy as he claimed (or at least, not under that name).

Mr H says the police told him that Mr P was not the landscaper's real name. He says he visited both addresses that he'd been given for Mr P but he was unknown at both. While I haven't seen independent evidence of this, I have seen evidence that Mr H hired a private investigator to track down Mr P. The private investigator, according to Mr H, mis-traced Mr

P, an error which led to Mr H's County Court Judgement against him being set aside. So, it does appear Mr P is difficult to locate and the evidence as a whole persuades me that he was using an alias.

There are lots of reasons why someone might use an alias and false address, but, in the circumstances, I don't think it's an unreasonable assumption that this was done to prevent customers like Mr H from being able to contact Mr P.

Santander argue that Mr P wouldn't have turned up to the job, ordered materials and left his tools there if he had no intention of completing the work, particularly after already receiving payment. I understand this point but I don't put as much weight on it as the bank does. While many scams involve non-existent goods or services, 'rogue trader' scams generally involve some work being carried out on a property – normally to a poor standard and/or at an inflated price. Such scams have a long history and the bank will be well aware of them. So, I don't think the fact Mr P did start the work is determinative – it may well have been a ploy to make it much more difficult for him to be prosecuted.

That idea is supported, I think, by evidence that Mr H has provided of two other people (though I understand there are others) who had the same experience around the same time. Though they do not give detailed descriptions of what happened, they both indicate that Mr P behaved largely in the same way as he did to Mr H. And, having considered information provided to me by the bank which received Mr P's money, I think its actions are more representative of steps I'd usually expect a bank to take in scam cases as opposed to civil disputes.

So, Mr P ran what appears to have been a short-lived business, likely under a false name and address with multiple unhappy customers claiming they paid Mr P but he didn't complete the work. On balance, this persuades me that he had no intention of completing the work and was running a dishonest scheme.

I also don't think this is a case of Mr H attempting to make a claim under the CRM Code because it is an easier alternative to pursuing the matter himself through the civil courts. Quite the opposite – Mr H appears to have made every effort to pursue the matter as a civil claim and has been unable to do so.

So, I'm persuaded that the provisions of the CRM Code are relevant here.

Should Mr H be refunded under the CRM Code?

In order to refuse reimbursement under the CRM Code, Santander would need to rely on one of the exceptions it sets out. Those which may be of relevance here include:

- Mr H ignored an Effective Warning when making the payment*
- Mr H made the payment without a reasonable basis for believing that it was for genuine goods or services*

As Santander considered this matter to be outside of the Code, it has not provided any submissions about whether it would have declined a claim even if it accepted Mr H had been the victim of a scam. If it wishes to make any arguments about this, or provide evidence of any warnings Mr H might have seen, then I invite it to do so in advance of my final decision.

I note that Mr H had spoken on the phone with Mr P and had received an invoice by post. While I think this reflects a certain degree of trust Mr H had in Mr P, perhaps due

to their shared backgrounds, I don't think his behaviour was unreasonable.

The bank's notes suggest Mr H did search online before going ahead with the payments and saw some positive reviews for Mr P. As already mentioned, I can find little about Mr P online now – but it's clear he did have, at the very least, a social media profile and there's no reason for me to dispute what Mr H said to the bank at the time.

I've also considered that had Mr H carried out more checks to satisfy himself that Mr P wasn't a scam – by, for example, asking to meet him in person then it's likely Mr P would have agreed to this – after all he was prepared to come to Mr H's home to carry out some work.

I understand Mr H had also been given a postal address for Mr P, which he wouldn't have known was false until he later made enquiries.

So, as it stands, I'm persuaded that Mr H did have a reasonable basis for believing he was paying for legitimate services and, without any evidence of warnings Santander might have provided, he should be refunded under the provisions of the CRM Code.

Based on the photographs I've seen, it's not apparent Mr H received any benefit from the work carried out by Mr P, so I don't think there should be a deduction from the refund.

Finally, regarding interest, the money lost clearly had a specific purpose and it's clear Mr H has been deprived of those funds since Santander declined his claim under the CRM Code. So, I think that 8% simple interest per annum is fair here.

My provisional decision

I'm minded to uphold this complaint about Santander UK Plc and ask it to pay Mr H:

- *The money lost - £7,000*
- *Interest at 8% simple per annum from the date it declined his claim to the date of settlement.*

Mr H agreed with my provisional decision. Santander didn't. It asked to see some of the evidence which had been relied on in reaching the provisional decision and, having reviewed that evidence, in summary it said:

- It did not agree with my interpretation of the court documents that had been provided. It argued that Mr H may have simply given up trying to pursue the matter.
- It is firmly of the view that the dispute is as a result of a breakdown in the relationship between Mr H and Mr P and that Mr P would likely have returned to finish the work had the relationship not deteriorated.
- Mr H raised a dispute in relation to someone else that he employed to rectify the works Mr P carried out.
- It doesn't agree there is enough evidence to support the claim Mr P used a false name and it believes that it may have identified Mr P living in another part of the country using the same name. It also argued that Mr H's private investigator's attempts to identify him appear to be inadequate.
- It pointed to inconsistencies in the call Mr H had with it – saying he claimed not to have known that he was paying the personal account of Mr P's partner at the time the payment was made.

- The invoice didn't make it clear how the final price had been agreed and the court documents showed that Mr H was claiming a lower amount from Mr P than he sought to recover from the bank

In response, Mr H expressed his surprise that the bank had been able to locate Mr P – despite the efforts of bailiffs that had been acting on his behalf. However, he was able to confirm that what the bank said was true, but that Mr P had since moved on.

Mr H also provided some further evidence including his subsequent attempts to pursue the outstanding debt. He clarified that despite the initial judgement being set aside, he was able to obtain another judgement against Mr P and Mr P's partner.

The documents show that he was able to track down Mr P's partner to another property in November 2020. Bailiffs attended the property but were unable to enter due to pandemic restrictions in place at the time. Mr P's partner confirmed to the bailiffs that Mr P had moved to another part of the country and was using an alias. It's clear from the statements made that she was no longer in a relationship with Mr P. A further email from the bailiffs to Mr H shows that they were unable to trace Mr P in June 2021. A final visit was paid to Mr P's now ex-partner early this year – but there was nobody at home and they were unable to recover any money.

Mr H also provided some further supporting evidence to show that another alleged victim had received their money back from their bank as well as an exchange of messages that took place soon after the original events between Mr H and another victim of Mr P discussing their attempts to track him down.

Santander was of the view that the additional evidence did little to support Mr H's position – only further demonstrating that this was a private civil dispute.

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.

I understand the strength of feeling on both sides of this dispute and, as I've said, this is a finely balanced case and one that I've considered carefully.

Both sides now accept that Mr P appears to have moved to another part of the country to work at a pub. He did so under the same name he used to communicate with Mr H and appears to continue to use the same social media account. Based on local media articles, he also doesn't appear to be particularly secretive about his presence there.

However, whether Mr P is now traceable is not the determinative factor here. And, neither is the fact the police don't appear to be pursuing Mr P. I need to decide, on the balance of probabilities, whether Mr P's intention was to defraud Mr H by taking his money without any intention to complete the work.

The evidence I've seen continues to suggest that Mr P operated a short lived business and, seemingly after taking money from a number of customers, left not just the area, but his line of work, to move to another part of the country. Mr P's ex-partner's testimony also does suggest an alias was being used by Mr H (albeit one he seemingly continues to use). I don't know whether her claim is true – but the other information provided by her is consistent with what we now know of Mr P's movements. And while Santander may have been able to trace Mr P through social media, I don't discount Mr H's testimony that Mr P was unknown at the

addresses he provided and nor the evidence that his private investigator and, seemingly, the bailiffs were unable to locate him.

I think It's also relevant that Mr H paid Mr P's ex-partner and not Mr P himself. Evidence from the bank which received Mr H's money suggests that Mr H wasn't alone in doing this. While there clearly may be a number of reasons why Mr P couldn't or didn't want to receive the money himself, the fact the payments went to his ex-partner and not Mr P would inevitably make it more difficult for the payments to be linked back to him.

Whether Mr H knew or ought to have known that the account belonged to Mr P's partner isn't, I think, particularly relevant in deciding whether what happened was a scam or civil dispute.

I don't think the evidence supports Santander's characterisation of the circumstances – that is that Mr H was fundamentally unhappy with the quality of the work, leading him to refuse to return Mr P's tools and pursue legal action. Santander seem to suggest that Mr P would have continued to carry out the work but for Mr H's unhappiness.

Mr H's testimony, supported by messages between him and Mr P, suggests that it was Mr P's unwillingness or inability to return and complete the work which led to the disagreement, not the quality of the work. In any case, the work completed by Mr P seems to be nothing more than digging up the garden.

I've listened to the call between Mr H and Santander when he reported the fraud. I don't think it supports the conclusion that Santander have reached. Though Mr H references the condition of the garden, in my view, it is clear that he's referring to the condition it is in because it has been dug up and left – not a complaint about the quality of the digging.

The fact other customers of Mr P have had similar complaints also does not suggest that Mr H was simply being unreasonable, and I don't think the subsequent dispute that Mr H raised has any bearing on this one. The later dispute was clearly about the quality of the work carried out. It's also worth noting that I understand a significant amount of the sum Mr H was paid was for materials, materials that never arrived and may never have been ordered.

I don't share Santander's concerns about the invoice provided to Mr H, it seems to largely reflect the payments he made (albeit he did not make them in cash) – a deposit of £2,000 followed by further payments for materials.

However, I've thought about the amount that Mr H should be able to recover from Santander and, after careful consideration, agree that amount should mirror the lower amount he claimed through the courts. Mr H has explained that this figure represents a deduction from the amount paid based on the cost of the items that were delivered and couldn't be returned and the cost of the hiring of a skip which he was unable to cancel. As Mr H may have had some benefit from these items, it's fair that the lower sum should be awarded.

Overall, for the reasons I've explained, I'm still of the view that Mr H has been the victim of a scam, rather than a civil dispute. And, as Santander haven't made any further submissions in relation to its or Mr H's liability under the CRM Code, my decision largely remains unchanged, other than I slightly reduce the amount Santander should pay to Mr H.

I'm mindful of the risk of double recovery here but I think it is unlikely given Mr H's previous attempts to recover the money and the costs involved in him continuing to do so. However, in the unlikely event of any money being recovered by Mr H he has agreed to repay it to Santander.

My final decision

I uphold this complaint about Santander UK Plc and instruct it to pay Mr H:

- The amount claimed by him - £6,502.05
- Interest at 8% simple per annum on the above amount from the date it declined his claim to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 April 2022.

Rich Drury
Ombudsman