

## **The complaint**

Ms W complains that Santander UK Plc hasn't reimbursed the money she says she's lost to a scam.

## **What's happened?**

Ms W says she found a builder to carry out renovation work on her property through a popular trade directory. Between 5 and 20 November 2021, she transferred a total of £13,693.69 in deposit payments to the builder's bank account. But the builder didn't carry out any work on her property, and they intentionally damaged her roof.

The builder refunded £2,000 on 25 November 2021 and agreed to refund the rest of Ms W's money over time, but no further refunds have been received.

Ms W contacted Santander for assistance, but the bank declined to reimburse her remaining £11,693.69 loss because it said that this matter is a civil dispute between Ms W and a legitimate builder who, unfortunately, turned out to be untrustworthy. Santander said it's not a true scam because there is no social engineering element, the builder existed, and Ms W made legitimate payments for services.

Ms W asked this Service to investigate a complaint against Santander. She said that the conclusions it's drawn are incorrect, and investigations carried out by Trading Standards and her legal representative after the scam have shown that the builder:

- has no trading history.
- provided a fraudulent insurance certificate.
- has used a fake address.
- is not running a registered company as stated.

Ms W has told us that, because Santander wouldn't reimburse her financial loss, she has been unable to instruct essential renovations on her property to make it habitable, so she has been living in a caravan with her family.

## **What did our investigator say?**

Our investigator concluded that Ms W has fallen victim to a scam here, and that Santander should've reimbursed the money she lost under the Lending Standards Board's Contingent Reimbursement Model ('CRM Code'). They recommended that Santander reimburse Ms W's remaining loss and pay interest from the date it declined to reimburse her under the Code to the date of settlement. They also recommended that Santander pay Ms W £500 by way of compensation for the trouble and upset it has caused her by refusing to reimburse her when she first contacted it.

Santander didn't agree, it said:

- when Ms W made the payments, she confirmed that they were for building work and Santander provided a relevant scam warning.
- Ms W has been educated about this type of scam before when a builder she'd instructed didn't carry out work of a satisfactory quality on her property.
- Ms W says she wasn't comfortable paying the builder £10,000 upfront, but she paid over more money than this in smaller amounts.
- the builder attended Ms W's property with materials, so she wouldn't have suspected they were a 'rogue trader' and Santander couldn't have prevented the scam.

The complaint has now been passed to me to decide.

### **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.

Santander has signed up to the CRM Code, and it was in force when Ms W paid the builder. Under the CRM Code, the starting principle is that a firm should reimburse a customer who has been the victim of an Authorised Push Payment ('APP') scam. But the CRM Code is quite explicit that it doesn't apply to all APPs. It says:

*"DS2(2) This code does not apply to:*

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

I've considered the evidence Ms W has provided, including the photos of her property she's sent us and the evidence we've received from Trading Standards and her legal representative. Having done so, I'm not persuaded that the builder is a legitimate supplier of services. I acknowledge that the builder refunded Ms W with £2,000 on 25 November 2021, and this is undoubtedly unusual in cases of fraud. I also understand the builder did attend Ms W's property to do some 'work', but they damaged the property without carrying out the work they were paid for and from what I know of fraud and scams, it isn't unusual for fraudsters operating this type of scam to pretend to carry out some building work in order to keep the scam alive and obtain more money from their victims. Everything else I've seen supports what Ms W has said about how she's fallen victim to a scam – I've seen that:

- the work Ms W paid for was not started and/or completed.
- the builder caused damage to her property, which I wouldn't expect a legitimate builder to do.
- the builder gave her an incorrect address and showed Ms W a fake insurance document.
- the builder has no trading history.

Overall, I'm satisfied that the builder set out to defraud Ms W, having no intention of carrying out the work she paid for. So, I don't think DS2(2)(b) applies here.

The CRM Code requires firms to reimburse customers who have been the victims of APP scams, like the one Ms W has fallen victim to, in all but a limited number of circumstances. Santander has argued that two of the exceptions apply in this case. It's said that Ms W ignored an effective warning/s it gave during the payment journey/s and she made the payments to the builder without a reasonable basis for believing that the payee was the

person she was expecting to pay, the payment was for genuine goods or services and/or the person or business she was transacting with was legitimate.

### Effective warning

The CRM Code says:

- SF1(2)(e) As a minimum, Effective Warnings should meet the following criteria*
- (i) Understandable – in plain language, intelligible and meaningful to the Customer*
  - (ii) Clear – in line with fair, clear and not misleading standard as set out in Principle 7 of the FCA’s [Financial Conduct Authority] Principles for Businesses*
  - (iii) Impactful – to positively affect Customer decision-making in a manner whereby the likelihood of an APP scam succeeding is reduced. This should include steps to ensure that the Customer can reasonably understand the consequences of continuing with an irrevocable payment;*
  - (iv) Timely – given at points in the Payment Journey most likely to have an impact on the Customer’s decision-making;*
  - (v) Specific – tailored to the customer type and APP scam risk identified by analytics during the Payment Journey, and/or during contact with the Customer.*

Santander has said that it’s warned Ms W about this type of scam in the past, and I’ve looked at the evidence the bank’s referred to. But I don’t consider the information it gave to be timely or specific enough in relation to the payments Ms W made to the builder to be considered an effective warning under the CRM Code. I’ve moved on to think about the warning Santander says it gave during the relevant payment journey/s. The warning is set out below:

*“Could this be a doorstep scam? Please double-check the bank details personally with your payee, as criminals intercept emails with false details. If someone is pressuring you, please stop now.”*

Overall, I’m not satisfied it can reasonably be said that Santander met the requirements of the effective warning exception with the warning it gave Ms W. The information Santander gave wasn’t specific – it wasn’t relevant to the type of scam Ms W fell victim to, it talks about checking payee details are correct, email interception scams and coercion but it doesn’t talk about scams by fraudulent traders. I don’t think the information was impactful either – it doesn’t set out the potential consequences of continuing with an irrevocable payment and considering everything, I’m not persuaded it would affect a customer’s decision making, in the situation Ms W was in, in a manner whereby the likelihood of a scam succeeding was reduced, or that a reasonable person would fully understand the scam risk from the warning Santander gave.

### Reasonable basis for belief

From what I’ve seen, I’m satisfied that Ms W had a reasonable basis for belief in this case. She sourced the builder using a popular and trusted trade directory – a directory that claims to provide trader recommendations that can be relied upon because of vetting that’s been carried out. And the builder met her in person, showing her an insurance certificate that doesn’t look unprofessional or suspicious. The parties talked about the work that needed doing to Ms W’s property and she made deposit payments that were relevant and proportionate for each section of work after declining to pay over a non-specific £10,000

lump sum. It is not unusual for customers to make deposit payments for building work, to cover the cost of things like the materials required to commence work. Overall, I can understand why the fraud went undetected by Ms W and I don't think this is unreasonable in the circumstances – particularly as Santander failed to adequately explain the scam risk.

### Conclusions

I'm satisfied that Ms W has been defrauded here, and that Santander should have reimbursed her under the CRM Code because none of the permitted exceptions to reimbursement apply. So, it should now reimburse her remaining financial loss and pay interest at 8% per annum on that loss from the date it should have reimbursed her under the Code to the date of settlement.

Ms W has found herself in an unenviable situation as a result of this scam – she's been left without sufficient funds to make her property habitable and so, she's been living in a caravan for a significant period with her young family. Ms W has explained that the situation has left her desperate and has affected her mental health. I am mindful that her loss was ultimately caused by the callous acts of fraudsters. But, if Santander had reimbursed her under the provisions of the CRM Code when it ought to have done, then much of the trouble and upset Ms W has experienced could have been avoided. For this reason, I am satisfied that an award of £500 compensation is appropriate in the circumstances.

### **My final decision**

For the reasons I've explained, my final decision is that Santander UK Plc should:

- reimburse Ms W's remaining financial loss - £11,693.69 – and pay interest at a rate of 8% per annum on this amount from the date the bank should have refunded Ms W under the CRM Code to the date of settlement\*; plus
- pay Ms W £500 for the trouble and upset it has caused her.

\*If Santander considers it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Ms W how much it's taken off. It should also give her a certificate showing this, if she asks for one, so that she can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 11 August 2022.

Kyley Hanson  
**Ombudsman**