

The complaint

Mr and Mrs B complain that Santander UK Plc ('Santander') won't refund money they paid to a trader.

What happened

Mr and Mrs B say that they received a visit from a company I'll call 'T' in this decision. They thought T was connected to a regional water company because the logo on its van was similar (as was the name of the company). A representative of T told Mr and Mrs B that they were working to locate a serious blockage under the road which would be resolved at no expense to Mr and Mrs B. T then said that the source of the problem, that was affecting neighbours and local businesses, was within Mr and Mrs B's property and needed to be fixed immediately. And as the problem was on Mr and Mrs B's property, they would be responsible for the cost of remedying it. Mr and Mrs B agreed to pay a deposit of £3,000.

Representatives of T explained to Mr and Mrs B that they needed to buy a pump. Mr and Mrs B thought this was unusual as they had been shown equipment in T's van. They also felt that representatives of T had become pushy. Mr and Mrs B called the regional water company they thought T was linked to and established that this wasn't the case and there were no reported issues in the area. So when the representatives of T returned Mr and Mrs B said they had contacted their insurers and been advised not to allow any work to take place until an assessor had visited their property. This bought them some time to contact Santander to report what had happened.

Santander looked into Mr and Mrs B's concerns but determined that they had a civil dispute with T and weren't the victims of a scam. Mr and Mrs T were unhappy with the response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint initially recommended that it be upheld but after reviewing the responses issued a second view. In this view the investigator said Santander acted reasonably in concluding that Mr and Mrs B were involved in a civil dispute with T. She said this for the following reasons:

- Confidential information from T's bank led her to believe that T was operating as a genuine business at the time and continued to do so afterwards.
- Aggressive sales tactics and poor service don't demonstrate fraudulent intent.
- Factors like the high visibility jackets and uniforms worn by T's staff, the technological equipment carried, the van with logos and letterheaded invoices make it more likely T was operating a genuine business.
- T was registered at Companies House (although only shortly before the visit to Mr and Mrs B's address).
- One of the reasons T was unable to complete the work was because Mr B denied access and contacted Santander rather than because T refused to return or disappeared.
- The police investigations hadn't progressed.

Mr and Mrs B didn't agree with the investigator's findings, so their complaint has been passed to me to consider. In summary, they said:

- T's representatives didn't wear uniforms or have equipment. And the logo on the van and T's letterhead didn't match.
- T's representatives didn't complete any form of investigation.
- The investigator was incorrect in saying that the reason work wasn't completed was because he denied access to his property. Mr B exercised his right to cancel the 'contract' and the police advised him not to allow T back to his property. T also ticked a waiver clause denying him the right to cancel the contract – something a legitimate company wouldn't do.
- T gained access to Mr and Mrs B's property under false pretenses and fabricated problems that didn't exist.
- Company registration isn't a mark of legitimacy.
- The behavior of representatives of T wasn't professional.
- Mr B is unable to comment on the receiving bank information he hasn't seen but confirms that he has never received a refund.
- Santander should have stopped the payment to T.

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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I'm sorry to hear that Mr and Mrs B have lost money. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"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".

So the CRM Code isn't a general protection for consumers. Instead, it only applies in very specific circumstances – where the customer has been the victim of a scam.

In order for me to conclude that Mr and Mrs B have been the victims of a scam, I'd have to be satisfied that representatives of T deliberately tricked Mr B into making a payment for a service they had no intention of providing at the time he made his payment. I'm not persuaded I can say that is most likely what happened here and will explain why.

Mr B reached an agreement with T for certain work to be completed and paid a deposit of £3,000 for this work. Representatives of T said they needed to obtain a pump and left Mr and Mrs B's property to obtain one. Later that day representatives of T returned to Mr and Mrs B's property but were denied access. I'm aware that in his response to the investigator's view Mr B disputed this and said that in fact he had exercised his right to cancel the contract. He went on to explain that the receipt bore a tick next to the wording that waived these rights, but he hadn't ticked the box.

I don't think it's in dispute though that Mr B told representatives of T that his insurer said he couldn't have any work completed until an assessor had visited. Mr B also said that one of the workmen offered to pump out the drains but was satisfied by the insurance story and

went away. In the circumstances, I can't reasonably conclude that representatives of T deliberately tricked Mr B into transferring money for a service it had no intention of providing. Instead, it seems to me more likely than not that Mr B was unhappy with T, particularly when he established that it wasn't linked to a regional water company as he had thought. The CRM Code doesn't cover dissatisfaction though.

I've also taken into account the fact that T's van showed its name on the side and back, suggesting that T was operating legitimately. And although the logo was similar to that of a regional water company, the name wasn't the same. Representatives of T also showed Mr B equipment in the van including a laptop and camera to put down the drain. I appreciate that in his response to the investigator's second view Mr B said this wasn't the case. But I have seen that Mr B put this in writing some time ago, so I think it's more likely than not that this was the case and that Mr B's recollection of events is less clear now given the time that has passed.

Like the investigator, I've seen confidential information from T's bank. I can't share any details with Mr and Mrs B, but the information doesn't lead me to think it's more likely than not that T's account was being used fraudulently.

Mr B has kindly shared with this service the messages exchanged with T after the deposit had been paid. In these messages a representative of T explained to Mr B that T had already bought materials and wouldn't be able to get a refund for these or refund Mr B while T's account was frozen. T's confidential statement suggest this was the case.

I agree with Mr and Mrs B that the fact that T was registered at Companies House at the time of the transaction does not in itself mean that T was a legitimate company. But it is another factor I've taken into account in reaching my decision.

I've also considered the fact that the police have referred to other reports of people who've lost money to T. The police investigation isn't complete, and I have no information about the circumstances of any other loss. And although I can see that the matter was reported to Trading Standards, there's no evidence that Trading Standards reached the decision that T acted fraudulently. So I don't think this evidence outweighs the other evidence I have seen.

I appreciate there are other factors that are strange, such as the fact that the logo on T's van differed from that on the receipt Mr B was provided with, but I'm not persuaded these anomalies mean T took Mr and Mrs B's funds fraudulently

I've gone on to consider whether Santander should have intervened in any way when the payment request was made. But I don't think the payment request was so unusual and out of character that Santander should have had concerns that Mr and Mrs B may be the victims of a scam. There's a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. Whilst banks have obligations to be alert to fraud and scams and to act in their customers' best interests they can't reasonably be involved in every transaction.

I'd like to explain to Mr and Mrs B that a bank transfer is like giving cash in that funds leave an account immediately and are then outside of the sending bank's control. When a fraud claim is raised by a victim, the sending bank is required to notify the bank that received the funds (the receiving bank) in an attempt to recover them. The bank that receives the funds will place a block on any funds that remain in the account while it investigates the origin of the funds. If the receiving bank is satisfied that fraud has taken place it will then return any funds that remain in the account. So, Santander didn't release Mr and Mrs B's funds as Mr B suggests. The receiving bank determined that this is a civil dispute and so removed the block it had applied.

Overall, whilst I'm really sorry to hear of Mr and Mrs B's loss, I can't fairly hold Santander responsible so am not asking it to do anything.

My final decision

For the reasons given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 7 March 2023.

Jay Hadfield
Ombudsman