

## Complaint

Mr L is unhappy that Santander UK Plc hasn't reimbursed him after he claimed that he'd fallen victim to a scam. Mr L is represented, but for simplicity's sake I've referred to him throughout the text of this decision.

## Background

Mr L wanted to have home improvement works carried out. He contacted a particular contractor that had been informally recommended to him. The works were extensive and involved extending Mr L's home into his garden. There were other supplementary pieces of work that needed to be completed to rewire the now extended ground floor and to preserve the structural integrity of the rest of the house.

The contractor estimated the works would cost £21,000 and set out a schedule of payments. Mr L paid £4,000 upfront and in cash. Mid-way through the project, Mr L queried why so little work had been done. By this point, he'd paid £19,600 and there didn't appear to be anything meaningful to show for it. The contractor said he was not willing to continue work unless he was paid more. He also claimed that there had been a verbal variation to his agreement with Mr L – and that the total price of the job was now around £29,000.

Mr L decided to not pay any more money to his contractor. He's told us that he sought the advice of a different builder who told him that the works weren't up to scratch. He needed to pay more to rectify the poor-quality work that had been carried out up until that point. This included a rewiring of the ground floor of Mr L's home and steps to make sure the property was gas safe.

Mr L believed that he'd fallen victim to a rogue trader scam. He contacted Santander. It looked into his concerns, but it didn't think it should be expected to reimburse him. In its final response, it said:

*... you have willingly made the payments therefore Santander cannot be held liable for any financial loss. In this case, this is not a true APP (authorised push payment) scam as there is no social engineering element involved ... you were making a legitimate payment for building work and the builder exists. It is suggested that a small claims court is more appropriate in this case as this is a civil dispute."*

Mr L disagreed with the response from Santander and so he referred his complaint to this service. It was looked at by an Investigator who upheld it. The Investigator didn't agree that this was a civil dispute. She said it was appropriate to treat this as a scam. Her primary reason for coming to that conclusion was that the receiving bank (i.e. the bank that operates the contractor's account) confirmed that there has been another report of fraud against this customer.

She also said that Santander ought to have been concerned when Mr L visited a branch to withdraw £2,000 in cash on two consecutive days. This was atypical of his previous account usage and so should've been seen as a sign that he was at risk of financial harm due to fraud. She also looked at the later payments that were made by bank transfer. These are

covered by the Lending Standards Board's Contingent Reimbursement Model ("CRM) code. Under that code, Santander is expected to reimburse its customer where they fall victim to a scam, unless one of the exceptions to reimbursement apply. The Investigator was satisfied that no exceptions applied.

Santander disagreed with the Investigator's opinion. It argued that Mr L hadn't fallen victim to a scam but had a civil dispute with the contractor. As a result, it shouldn't be expected to reimburse him under the CRM code. It said that fundamentally Mr L was unhappy with the quality of the work performed by the contractor. It suggested that the extra £500 that the contractor requested from Mr L could simply have been a consequence of rising costs of raw materials.

Santander also contacted the contractor's bank to confirm whether it had received fraud reports. It said that it had received one. It was disputed by the contractor who said he would provide photographic evidence to support his position.

As Santander disagreed with the Investigator's opinion, the case was passed to me to consider and come to a final decision.

## **Findings**

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

### *Cash withdrawals*

The first payments Mr L made to the contractor were made in cash. Mr L visited a Santander branch to make withdrawals over the counter. The Investigator said that these cash withdrawals weren't consistent with the way the account was normally used. Mr L should therefore have been asked about what his reasons were for withdrawing the funds to ensure that he wasn't at risk of financial harm.

I'm not persuaded by that argument. I don't think it would've been apparent to Santander that there was a fraud risk associated with two relatively small cash withdrawals. In addition to that, even if Santander had questioned the withdrawals with Mr L, I don't see what information it could have elicited from him that might have protected him from the losses he went on to suffer. From Santander's perspective, it had no way to know that there would be any problems with the agreement Mr L had reached with this contractor. For that reason, I don't think Santander did anything wrong in allowing Mr L to withdraw the £4,000 in cash and so I don't direct it to pay any refund in connection with it.

### *Bank transfers*

The later payments made to the contractor were carried out by bank transfer. That means different rules and regulations are applicable. Since Mr L authorised these payments, he is presumed liable for them under the Payment Services Regulations 2017 (PSRs). However, Santander is a signatory to the CRM code. This code sets out a basis on which it should retrospectively reimburse its customer if they fall victim to an authorised push payment (APP) scam.

It only applies to APP scams which it defines in the following terms:

*"... a transfer of funds executed across Faster Payments, CHAPS or internal book transfer, authorised by the Customer in accordance with regulation 67 of the PSRs*

*where .... the Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

The code specifically excludes what it refers to as “*private civil disputes*” from its application. As an example of such a scenario, it says:

*... 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.”*

It’s quite clear that it doesn’t protect customers in circumstances where they haven’t fallen victim to a scam. To find that Mr L’s losses fall within the ambit of the code, I need to be persuaded that it’s more likely than not that he was a victim of fraud. This isn’t a straightforward question to address. I need to be persuaded that the contractor he hired had a settled intention to scam him. I cannot know what was in the minds of the contractor at the time. As a result, I must infer what his intentions were based on what the available evidence tells me.

This case is finely balanced. However, I’m satisfied that the evidence supports the conclusion that this was a scam, rather than a purely civil dispute. The evidence shared by the receiving bank is relevant here. This shows that the contractor was accused of fraud by another client. He told his bank that he would demonstrate that this claim was bogus by providing photographic evidence. He never did so, and the receiving bank has since closed his account. I think a legitimate trader would’ve followed through and shared that evidence with their bank if they were able to do so.

The report from the other client is also consistent with the means of operating that has been described to us by Mr L – in other words, taking payment up front and then not carrying out or only partially carrying out his side of the agreement. In addition, the evidence provided by Mr L suggests that the work carried out by this contractor was not merely low quality, but unsafe.

I’m therefore persuaded that the bank transfers Mr L paid to the contractor are covered by the CRM code. As a starting point, the code says that he should be reimbursed. However, Santander doesn’t need to reimburse him if it’s able to show that an exception to reimbursement applies. As I understand it, no warnings were displayed during the payment process and so it can’t be said that Mr L ignored an effective warning when making these payments. I’ve also considered whether it can decline to reimburse him on the basis that he made these payments without a reasonable basis for believing that he was paying for genuine goods or services.

I’m not convinced this exception is applicable here either. Mr L hired the contractor based on an informal recommendation and signed a clear agreement setting out what works were to be completed. I don’t think he could have reasonably anticipated the difficulties with the contractor that were to follow.

### **Final decision**

For the reasons I’ve set out above, I uphold this complaint. If Mr L accepts my decision, Santander UK plc should refund him £15,600. It should add interest to this sum at the rate applicable to the account from which the funds originated.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 June 2023.

James Kimmitt  
**Ombudsman**