

The complaint

Mr and Mrs G are unhappy about Santander UK Plc's (Santander) decision not to refund the £67,000 they paid for building work.

What happened

The view of 6 September 2023 detailed the background to this complaint. So, I'll only provide a brief overview of some of the key events here. Mrs G received a recommendation for a builder (I will refer to as M). On 16 July 21, Mr and Mrs G paid the first instalment of £7,200. They paid a further twelve instalments between July 2021 and February 2022 – the final three being paid to the builder's personal joint account.

At the time Mr and Mrs G believed they were paying for services from M. However, they say M didn't finish the work and the work that was completed was substandard.

Santander deemed the matter a civil dispute. Mr and Mrs G says this was a scam and want Santander to refund them.

Our investigator did not uphold the complaint. He thought Santander correctly classed this as a civil dispute between Mr and Mrs G and M and it isn't covered by the Contingent Reimbursement Model (CRM) Code. Mr and Mrs G did not agree, so the case has been passed to me for a decision.

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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

I'm sorry to hear about the situation Mr and Mrs G have been left in. They have paid out a considerable sum of money, yet it seems (from what they have said) the work is nowhere near completion and what has been carried out is substandard.

It's clear that Mr and Mrs G feel strongly that M has tricked them. From their perspective, M provided substandard half-finished work and ultimately didn't turn up to complete the job. But I don't have the power to decide any dispute between Mr and Mrs G and M. My role is limited to looking at whether Santander has treated Mr and Mrs G fairly.

Santander didn't contract with Mr and Mrs G for the building project they wanted done, and I can't hold it responsible for any breach of contract or other failings on M's part. As a starting

point in law, Mr and Mrs G are responsible for payments they've instructed Santander to make. Unfortunately, there's little protection available to them for bank transfer payments, like these.

Santander was under a range of other duties and obligations at the time, including to be on the lookout for payments that were unusual or out of character with the aim of preventing customers from falling victim to fraud and scams.

It's also a signatory to the CRM Code. In certain circumstances, that code can entitle a customer to be reimbursed by banks or building societies after they've fallen victim to an APP (authorised push payment) scam.

I've thought about whether Santander has any obligation to refund the losses as a result of the CRM Code that it has signed up to. But the CRM Code is explicit that it doesn't apply to

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

In order for me to conclude that the payment Mr and Mrs G made was part of an APP scam and that Santander should refund them, I'd need to be reasonably satisfied from the available evidence that M was not legitimate and had set out to defraud them from the outset. But I don't think, based on what I know, that I can safely conclude that.

There is a high legal threshold or burden of proof for fraud. And there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties for a dispute to exist. And unfortunately, businesses (such as M's business) can fail or be mismanaged such that contracts are breached and agreed goods and services aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

An APP scam is where a customer was deceived into making a payment to another person for what they thought were legitimate purposes but turned out to be fraudulent. In this context, that would mean that the very purpose for which M obtained the payments would need to be different to what Mr and Mrs G believed it was for due to dishonest deception. All things considered I simply can't safely conclude that M took Mr and Mrs G's money without ever having any intention of carrying out the work. The evidence available to me simply isn't enough to support such a finding.

It seems to me that M was more likely than not operating as a legitimate builder. M's business was registered as a limited company on companies' house and had been incorporated since 2016. From what Mr and Mrs G have said, they viewed other work completed by M which was satisfactory and there's no dispute that M did do some work for Mr and Mrs G here. And I haven't seen any evidence that M didn't use the money in the way it said it would – i.e. for building related work. M may have provided substandard work and not completed the job but that's not enough to say this was an APP scam.

Whilst I am unable to share details about a third party and the nature of their relationship with their bank, the evidence I've seen, regarding both beneficiary accounts, indicates that the accounts were legitimate, and the activity run as the beneficiary bank would expect. They suggest this was a genuine business that had been operating a business account for several years. The bank hasn't said it had any concerns about how the accounts were being operated.

I am aware there are ongoing investigations into M and the business is in the process of being wound up. Whilst an investigation in relation to other matters might ultimately show that M's of poor character; it does not necessarily show that in relation to *the specific transactions carried out* in this particular case that they were made to an APP scam. However, Santander did say they would review the case – if material new evidence comes to light that changes the position.

Overall, I think it's reasonable for me to consider that this is a civil dispute between Mr and Mrs G and M. Mr and Mrs G may be unhappy with the goods or service they have received. But I'm afraid there simply isn't enough evidence to support a finding that this was an APP scam.

I appreciate how frustrating and disappointing this answer will be. Mr and Mrs G have lost a lot of money as a result of M's failure to complete the agreed work. But I can't exclude the possibility that M entered the agreement in good faith, intending to fulfil the work and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't lead me to conclude it's more likely (than these alternative possibilities) that M intended to steal their money from the outset and never had any intention of fulfilling the arrangement in full or in part.

That means that I can't fairly hold Santander responsible for the loss suffered here by Mr and Mrs G. It also means I find that Santander had no ability or obligation to try and recover their money.

In addition, Santander doesn't have any duty or obligation to intervene in payments that are legitimate or to protect its customers from the impact of a bad deal. So, I can't fairly criticise Santander for not doing more when Mr and Mrs G made the payments.

In saying all of this, I don't underestimate the impact this whole matter has had on Mr and Mrs G – I am sorry they have lost out seemingly through no fault of their own. It does seem their trust in M was misplaced and he has badly let them down. But that fault lies with M, not with Santander. And it's simply the case that I can't fairly tell Santander to pay them the money they've lost, because I don't think Santander has treated them unfairly or was otherwise at fault here.

In such civil matters, it is for Mr and Mrs G to pursue other ways to resolve their dispute, including contacting the police, Action Fraud and Trading Standards – which I understand they have done.

Ultimately there is insufficient evidence to persuade me that the conclusion Santander reached - at the time and based on the evidence available - was unfair or unreasonable. Based on all the information I've seen; I don't think Santander's decision to treat this as a civil dispute was unfair or unreasonable.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 20 March 2024.

Kathryn Milne
Ombudsman