

The complaint

Mrs U complains that Santander UK Plc hasn't refunded money she paid to a builder for home improvement work which wasn't completed. Mrs U also complains that Santander UK Plc has only refunded half of the money she paid to an architect.

Mrs U has referred other complaints to this service, but for the avoidance of doubt, this decision concerns only these two complaint points.

What happened

In early 2022, Mrs U wanted to undertake a building project on her property.

The property required substantial work. Mrs U explains that it had been sitting empty from 2018 to 2021, during which time it had been broken into and badly damaged.

She was reluctant to deal directly with a builder, so engaged the help of a trusted friend, Mr B.

Mrs U located a planning and structural engineering firm to help draw up the plans and obtain planning permission. I'll refer to this firm as the "architect". C provided Mrs U with an estimate. This estimate gave a total cost of £500. The estimate says this included drawing up plans and applying for planning permission for the conversion of two flats, together with planning associated structural work.

The proposed work Mrs U wanted carried out would include re-wiring, new flooring, new bathrooms, structural steelwork, brickwork and replastering.

To carry out this work, Mrs U found what looked a suitable looking firm on a comparison website. I'll refer to this firm as the "builder". The builder provided an estimate for the list work required. The total cost of the works added up to £45,000. This cost was to be paid in instalments, on a schedule running from March 2022 to June 2022.

Mrs U arranged to forward all of the payments to her friend Mr B, who in turn would pay the builder on her behalf.

The work commenced, and between 19 March 2022 and 11 April 2022, Mrs U transferred a total of £16,500 to Mr B for this purpose. She explains that she also paid part in cash.

Mrs U says as part of the work carried out, the garage at the rear of the property was removed. This hadn't been part of the agreement. The builder had asked Mrs U for the architect's plans, but Mrs U explains there would have been nothing in those plans besides the structural beam size. She didn't think this should have been necessary.

On 12 April 2022, Mrs U made a payment of £650 directly from her Santander account to the architect. She says she was then asked to pay for a structural steel but didn't agree to this. The builder then stopped work and Mrs U explains that her calls stopped being answered.

Mrs U reported the matter to the Police and Action Fraud. However, while the Police provided her with a crime reference number, it doesn't appear any further action was taken. Mrs U also reported the matter to Trading Standards. It does not appear any further action was taken by Trading Standards.

With the work left unfinished, Mrs U reported the matter to her bank, Santander. She said that she'd been the victim of two scams. These were Authorised Push Payment scams (APP scams) which she alleged had been perpetrated by the builder and by the architect.

At the time of Mrs U's payments, Santander was a signatory of the Lending Standard Board's Contingent Reimbursement Model Code (the LSB's CRM Code). The CRM Code requires signatory firms to reimburse victims of APP Scams in all but a limited set of circumstances. However, it excludes claims relating to private civil disputes – such as between a legitimate trader and a customer. The CRM Code explains that this can include situations where the customer has paid for goods or services but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier. The terms of the CRM Code are available from the LSB.

Santander looked into what had happened but didn't think it was liable to refund Mrs U for the payments she'd made to help pay the builder. Santander didn't think it had been established that the builder had carried out a criminal APP scam. Santander thought this was a private civil dispute between her and the builder. Because the payments had been made by bank transfer (and had gone via Mrs U's friend), the protections that would apply against breach of contract or misrepresentation if Mrs U had paid by card weren't available. In summary, Santander said the payments she made for the builder weren't covered by the CRM Code. It didn't refund her.

But Santander accepted that the architect likely hadn't been a legitimate supplier. The account Mrs U had paid wasn't in the architect's name. Santander treated this as an APP scam, meaning the CRM Code applied. It thought it was fair for Mrs U and it to equally share the responsibility for what had happened and refunded her 50% of the money she'd lost to the architect.

Mrs U didn't accept this. She referred her complaint about Santander to this service for an impartial review.

Our Investigator looked at everything afresh. During his investigation, he obtained information from both sides, and specifically whether there was information to show the builder had carried out a criminal scam. However, the Investigator didn't think the evidence pointed towards the builder having had no intention to carry out the work as agreed.

Based on the evidence presented and his own investigations, he didn't think Santander was responsible for refunding the money Mrs U had paid the builder. Mrs U could pursue the matter through the small claims court, but Santander couldn't fairly be held responsible for the builder's failure to complete the work.

He thought that Santander's offer to refund half of the money Mrs U had paid to the architect was fair. He noted that Mrs U had said that when she and Mr B had looked into using the architect, they had checked Companies House, but been unable to find any information to link what they found to the person they'd been dealing with.

And he noted that when Mrs U had made this payment, Santander said it had flagged that the account Mrs U was paying wasn't in the name of the company she thought she was dealing with (although Mrs U had disputed being aware of this at the time). The Investigator therefore thought it was fair for Mrs U to share the loss due to this payment equally with

Santander. He didn't think the bank needed to do more.

Mrs U didn't accept the Investigator's findings. She thought if services weren't provided to her, then this should command a full refund. When the builder had left the site, the work was far from complete, and the property hadn't been left in a habitable state. She said this was more than an agreement gone wrong. She also thought the Police and Trading Standards should have taken action against the builder but had failed to do so. Mrs U said Santander should have protected her from what had happened.

As no agreement could be reached, the case has been referred to me to review everything afresh and to make a final 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.

I'm sorry to hear about the situation Mrs U is in. She's detailed the wider circumstances she faces. She has paid a considerable sum and the work she wanted done is very far from complete, leaving the property in an uninhabitable state. Mrs U is no longer in contact with the builder.

Given this it doesn't seem at all likely that the builder will return to finish the work. Mrs U has tried to pursue the builder through the Police, Action Fraud, and Trading Standards, but none of these bodies appear to have sought to prosecute or investigate the builder further.

Based on what I've seen, there's an argument to say the builder has breached his contract with Mrs U. But I'm not deciding a dispute between Mrs U and the builder – I don't have the power to look into a complaint about the builder. My role is limited to deciding the dispute between Mrs U and her bank.

Of course, Santander didn't contract with Mrs U for the works she wanted done, and I can't hold the bank responsible for any breach of contract or other failings on the builder's part. As a starting point in law Mrs U is responsible for payments she's instructed Santander to make for her. Unfortunately, there's little protection available against breach of contract for bank transfer payments, like these were.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams. But it excludes private civil disputes. Simply put, in order to find Santander was somehow liable to Mrs U under the CRM Code, I'd need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Mrs U and the builder.

The question therefore, is whether the builder was acting fraudulently from the outset – deliberately setting out to deceive Mrs U (and her friend Mr B) into making these payments whilst never having intended to carry out the agreed work. That also means being able to exclude on the balance of probabilities the alternative possibility that this is simply a matter of the builder breaching his legitimate contract with Mrs U.

Put another way that means deciding whether the available evidence shows it is most likely that the builder set out to defraud Mrs U with criminal intent. That is a high bar to meet.

It's important to note that it isn't for Santander to investigate the builder, neither does it need to prove that the builder wasn't operating legitimately. It was for Mrs U to provide evidence to support those allegations.

While Mrs U has provided evidence showing that the work was not completed, this could be consistent with the builder broken a legitimate contract as much as with the builder never having intended to complete the work from before the payments were made.

There is little evidence here for me to rely on that would support a finding of the builder operating a criminal scam from the outset. Law enforcement and Trading Standards do not appear to have pursued the allegations of criminality. Some work was carried out, but the overall project was not completed. The work seems to have come to a halt at the point there was the need to fit a structural steel. Mrs U doesn't think the lack of the architect's plans should have stopped the builder from progressing, saying the only information the plans would have provided were the dimensions of the steel.

One possibility I can't exclude is that the problems Mrs U had with the architect (which both she and Santander accept was a scam) have contributed to a breakdown in the relationship between the builder and Mrs U. The lack of the architect's plan (and presumably the lack of a planning application or building regulations approval) may have been a bigger barrier to the builder's progress than Mrs U accepts.

The evidence available to me isn't enough to know what actually took place. But simply put, with the evidence available to me, I can't safely conclude that the builder took Mrs U's money without ever having any intention of carrying out the work. The evidence isn't enough to support such a finding as being the most likely of all the possible explanations.

I appreciate how frustrating and disappointing this answer will be. With the work unfinished, the property was left uninhabitable. But I can't exclude the possibility that the entered the agreement in good faith, intending to fulfil the work and then was unable or unwilling to fulfil the agreement for some other reason. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that the builder intended to steal Mrs U's money from the outset and never had any intent 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 Mrs U for her payments to the builder. It also means I find the bank had no ability or obligation to try and recover her money (which in any event would not have been possible given the money had been sent via Mrs U's friend's account).

In saying this, I don't underestimate the impact this whole matter has had on Mrs U – I am sorry she has lost out seemingly through no fault of her own. But it's simply the case that I can't fairly tell Santander to refund her the money she's paid the builder because I don't think Santander has treated her unfairly or was otherwise at fault in connection to those payments.

I've gone on to consider whether Santander treated Mrs U fairly in relation to the payment she made to the architect. Both sides accept that this was likely a scam. The payment was made to an account that doesn't appear to have been connected to the firm or person that Mrs U believed she was dealing with.

Under the CRM Code a bank can share responsibility for the loss due to an APP scam, in some limited circumstances. One of these circumstances is where the bank is able to establish that its customer made their payment without a reasonable basis for believing the money was going to who they thought it was.

Here, Santander says it doesn't think Mrs U had a reasonable basis for believing she was paying the architect she thought she was paying.

I've thought whether Santander has established this – and so that Santander can apply this exception to full reimbursement of Mrs U's payment. This is a finely balanced question. I think there were some factors that would have led Mrs U to think she was dealing with a legitimate architect. She'd found their details on a comparison site, and she'd been given an invoice that looked plausible.

But there were other factors here that ought to have caused Mrs U to look into things a bit further before going ahead (and had she done so I don't think she would have gone ahead).

Firstly, Mrs U was paying an account in a name that didn't match that of the architect. Mrs U disputes knowing this at the time, but Santander has explained its records show this was the case, and that it had told Mrs U at the time. It points out that during a later call with Mrs U (when the scam had been uncovered) Mrs U had acknowledged she'd been aware the name didn't match. On the balance of the evidence here, I'm persuaded this was something Santander had told her at the time.

I've also taken into account that the step Mrs U (and Mr B) took to check who they were paying (searching Companies House) wouldn't have provided any verification that the person they were about to pay was the architect they thought. This was a large sum to send without checking it would be going to the correct account or that the person they'd dealt with actually was the architect they thought he was.

All considered I think Santander has been able to establish that Mrs U made her payment to the architect without having a reasonable basis for believing she was paying who she thought she was. So it was fair in the circumstances for Santander to refund half the money lost to this scam rather than the full amount.

When Santander became aware of the scam, it attempted to recover the funds Mrs U had paid to the architect, but this wasn't possible. I don't find that Santander could have done more here.

To reiterate, I am sorry to hear about what has happened to Mrs U, and the situation she is now in. She was the victim of a scam carried out by someone she believed was acting as the architect she needed for the work on her property. I think it's possible this led to the problems she had with the builder, and to the work being abandoned incomplete.

However, I think Santander acted appropriately in refunding half of the money Mrs U lost to the architect, and doesn't need to refund more than that sum. And I think Santander was entitled to consider that Mrs U had a private civil dispute with the builder rather than this having been a criminal scam. I don't require Santander to do more than it has already.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs U to accept or reject my decision before 29 November 2024.

Stephen Dickie
Ombudsman