

The complaint

Mrs L is unhappy that Santander UK Plc (“Santander”) have refused to refund money that she paid to have building works carried out.

What happened

Both parties are aware of the details of this complaint so I will only provide a brief summary.

In short though, Mrs L employed a company, that I’ll call B, to replace a roof. Mrs L says that the work was supposed to cost £5,000. After Mrs L had paid around £3,950 consisting of a credit card payment of £1,000 a transfer of £2,000 and £950 in cash. She was asked to pay a further sum to cover the cost of daily work. She had concerns at this point about the work being completed on time so she refused to pay until the roof had been completed. At this point B refused to carry on working.

Mrs L says that B became unresponsive to her communication attempts, causing her to lose confidence and ask for her money back, which B refused to do.

She reported the matter to Santander. Santander said that the transfer to B was a civil dispute between her and the builder. In relation to the £1,000 credit card payment Santander raised two claims a Section 75 claim and a chargeback claim. It declined the Section 75 claim as the person paid was not the same person the contract was with. In relation to the chargeback claim Santander credited Mrs L with £1,000 whilst it investigated the chargeback claim. Santander says it later declined the claim but it seems it did not claim back the £1,000 from Mrs L.

Mrs L referred the matter to our service but one of our Investigators didn’t uphold the complaint. They thought that Mrs L had a civil dispute with B, that meant that the provisions of the Lending Standards Board Contingent Reimbursement Model “CRM Code” (that might have otherwise required Santander to refund Mrs L) weren’t relevant.

She also did not think that Santander had done anything wrong in relation to the chargeback. She also said that Mrs L had not asked for a refund of the £950 payment she made in cash so she did not comment on it in her view.

Mrs L disagreed, in summary she said:

- She did not understand why Santander refunded £1,000 but not the £2,000
- She did not feel it was a dispute between her and B but in fact it was about her claiming her money back which was not used as intended, so she is entitled to her money back
- The reason she did not claim for a refund of the £950 is because it wasn’t paid through the bank

As no agreement could be reached, the case was passed to me for 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.

Firstly, I should highlight that there is a difference in consumer protections between credit card payments like the £1,000 payment made, a bank transfer such as the £2,000 one which is essentially transfers between two accounts and paying someone in cash. Given this I will address each payment in turn.

The £2,000 transfer

In law, Mrs L is responsible for payments she's authorised herself. Bill payments, like the one she made, don't attract any of the same consumer protections as payments made by card. I note Mrs L's comments in relation to this payment and her believing it was a debit card payment but it was not it was a transfer.

I can only hold Santander responsible for Mrs L's loss if the provisions of the Contingent Reimbursement Model Code ("CRM") are relevant. For that to be the case, Mrs L would have to have been the victim of a scam, which is defined in the CRM as:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

The above provisions mean I need to consider whether Mrs L was deceived by B and whether it set out to defraud her.

I accept that Mrs L has suffered a significant amount of stress here. On the face of it, she appears to have had building work started which was not finished. But disputes of this nature are, in my view, clearly those which belong in the civil, rather than criminal, courts.

As far as I can establish, B is an active company, nobody involved in it has attempted to conceal their identity and my understanding is that B's account provider has not upheld any accusations of fraud against B.

I can see from Mrs L's correspondence with B, that its representative visited her property numerous times over a number of weeks. It's clear that an amount of work had been carried out before the dispute arose. So, it does not seem as if B set out initially to scam Mrs L rather it appears that there was a dispute between the two parties after the work had started.

Overall, it is for Mrs L to demonstrate that B was acting fraudulently from the outset rather than there being a dispute during the building process. There's very little, if any, evidence which is consistent with that finding. So, I'm satisfied that Mrs L has a civil dispute with B. Which means that Santander is not liable under the CRM to refund the money to Mrs L.

I should add for the sake of completeness I am in no way saying B acted fairly with Mrs L all I am saying is that Santander are not liable for this payment due to the limitations of the CRM.

The £1,000 Credit Card payment

In this instance for Section 75 to apply I would need to be satisfied that the person that Mrs L paid was the same as the company that she had a contract with. I cannot find a link between the person that was paid and B so given this Section 75 does not apply.

In relation to a chargeback, which is another way a credit card payment can be recovered, it seems that a refund was provided whilst the claim was investigated. Santander say the claim was not successful, but Santander has confirmed that it did not reclaim the £1,000 – even though it believed it was entitled to do so. Santander has also said that it will not claim this money back.

As this payment has been refunded and Santander are not going to recover it, I don't think it relevant to make a finding as to whether the chargeback should have been successful. Especially as whether this payment should be refunded does not affect whether the other two payments should have been successful due to them being paid via other means and having different levels of protection for Mrs L due to this.

The £950 cash payment

In this instance, Santander are only liable to refund a cash payment to an account holder if it should have prevented it from being made. Such as if the withdrawal was in branch and large enough to suggest that someone was being scammed in this case that did not happen. So, Santander are not liable to refund this payment.

Finally, I understand Mrs L's frustration as it does seem incongruous that she received the credit card payment back but not the other payments but as stated above there are different levels of consumer protection depending on the payment method used. Santander is liable to refund payments only in specific circumstances.

In this instance it provided a credit of £1,000 while it investigated that payment and did not re-debit it when it says the chargeback was not successful. This though does not mean that Mrs L should receive the other payments back for the reasons I've set out above.

So, I do not uphold this complaint as I don't think that Santander has to do anything more.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 4 July 2024.

Charlie Newton
Ombudsman