

The complaint

Miss K complains that Santander UK Plc ('Santander') won't refund the money she lost.

What happened

Miss K says she entered into an agreement with a builder to complete substantial work on her property. The builder asked to be paid in advance and Miss K made faster payments totalling over £21,000, as well as cash payments to him between August 2022 and January 2023. Miss K says the building work that was completed was substandard and that the builder hasn't completed a lot of the work that was agreed. The builder then stopped communicating with Miss K except to say he would not complete the work.

Miss K contacted Santander to report what had happened in March 2023. Santander said the payments Miss K made were the subject of a dispute between Miss K and the builder and so it wasn't responsible for her loss.

Miss K was unhappy with Santander's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said Miss K had a civil dispute with the builder that meant that the provisions of the Lending Standards Board Contingent Reimbursement Model Code ('CRM Code') that might have otherwise required Santander to refund Miss K weren't relevant.

Miss K didn't agree with the investigator's findings and asked for a final decision, so her complaint has been passed to me to consider. She said the builder hadn't completed the work she'd paid for and that the investigator hadn't taken into account the cash payments she had made.

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 what happened to Miss K and the impact this has had on her. She has lost a lot of money, but that doesn't mean that Santander is responsible or that it now needs to refund her.

In law, Miss K is responsible for payments she's authorised herself and Santander has no obligation to protect her from a bad bargain or a potential civil dispute.

The CRM Code provides protection to scam victims. 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 only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I have set this definition out below:

...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 CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

"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."*

In other words, the CRM Code isn't a general protection for customers against non-receipt of goods or services. It only applies if it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met.

Here it's clear some work was completed, which Miss K isn't happy with, and the work wasn't finished. As I've said above, the CRM Code doesn't cover defective workmanship or other dissatisfaction with a supplier. The work wasn't finished by the builder but there's any number of reasons for this which don't amount to fraud. Unfortunately, businesses can fail or be mismanaged such that agreements are breached and agreed services aren't provided. Or relationships break down as work progresses. These scenarios amount to civil disputes which banks aren't responsible for.

It is for Miss K to demonstrate that the builder was acting fraudulently and not for Santander to prove this wasn't the case. I don't consider Miss K has done so. I note that the police discussed instructing an expert to determine if a criminal threshold has been reached but no further evidence has been provided. I don't know what crime the police are investigating so even if there is a conviction of some kind this doesn't mean the definition of an APP scam in the CRM Code would be met. I have also seen evidence from the bank that received Miss K's funds. I can't share any details but can confirm the evidence doesn't lead me to believe Miss K is the victim of an APP scam.

Even if I had concluded that Miss K was the victim of an APP scam, I wouldn't be able to ask Santander to refund the cash payments she says she made to the builder. Cash transactions aren't covered by the CRM Code and there is no protection for them.

Santander ought to be on the lookout for unusual and out of character transactions. Miss K had made a faster payment of £10,000 shortly before she started making payments to the builder. The first payments to the builder were for less than this. Subsequent payments were then made over a period of around five months and were to an existing payee, so I don't think they ought reasonably to have stood out as suspicious.

Overall, whilst I recognise this decision will be very disappointing to Miss K, I'm satisfied she has a civil dispute with the builder. This means that Santander is not liable to refund her.

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 Miss K to accept or reject my decision before 22 February 2024.

Jay Hadfield
Ombudsman