

The complaint

Mrs S complains that Santander UK Plc ('Santander') won't reimburse the money she lost when she says she fell victim to a scam.

What happened

The detailed background to this complaint is well known to both parties and was set out in the investigator's view. So, I'll only provide a brief overview of some of the key events here.

Mrs S had engaged a building company to complete a two storey rear extension at her property. This company subcontracted to a company I'll refer to as B in this decision. C was the director of B.

The relationship with the original building company broke down and C assured Mrs S that he and his company could complete the work within the original budget. Things started well with work being done and materials that had been paid for were delivered to site. As time went on, work slowed down and Mrs S says she was constantly chasing C. C then said his wife had been hospitalised and he needed to care for her and do school runs. Ultimately C and his team left the site.

Between March and June 2022 Mrs S paid B over £41,000.

Mrs S says that when the relationship with C started to break down, she contacted the Federation of Master Builders to use its alternative dispute resolution process but was told that C had been expelled from the member list. She then completed her own enquiries and established that C had a string of dissolved businesses. Also, following complaints made to Trading Standards, six charges of making dishonest representations and failing to complete works were brought against C in 2016. At the time he said he couldn't complete the work because of his wife's illness. Mrs S feels that C has followed the same pattern in her case and never intended to complete the agreed works.

Mrs S says that work hasn't been completed and work that was done was substandard and will cost a significant amount of money to put right. She also feels that her property has been devalued as she has been left without a fully functioning kitchen and no building control sign off.

Mrs S raised a scam claim with Santander. Santander said it isn't liable under the CRM Code as Mrs S has a civil dispute with C.

Mrs S was unhappy with Santander's response and brought a complaint to this service. She maintains that she is the victim of a scam and Santander should reimburse her.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said that the CRM Code definition of an Authorised Push Payment ('APP') scam hadn't been met and Mrs S had a civil dispute with B/C, so Santander wasn't liable for her loss. Overall, work was done but not completed and the standard of the work wasn't good.

Mrs S didn't agree with the investigator's findings and asked for a final decision, so her complaint has been passed to me to consider. In summary, she said:

- She feels she has demonstrated that C acted fraudulently and made dishonest

misrepresentations. He deceived her into believing he could complete work and she paid for materials that never arrived. Some work was completed but not £40,000 worth, and much of it was defective and had to be redone. Mrs S believes this work was completed to obtain more funds from her. And various tradespeople weren't paid by C.

- C has previous fraud convictions in similar circumstances going back to 2004. Mrs S provided a newspaper article from 2016 when C was charged with making dishonest representations and failing to complete building works as agreed. She said he follows the same pattern of citing his wife's health as an excuse for not completing work before going into liquidation. Mrs S believes this is clear evidence of C's character and intentions when he agreed to take over the project.
- She has tried to get information from the liquidator to see if they have found evidence that C acted fraudulently but has been told it is for the Insolvency Service to decide.
- Her understanding is that the starting position under the CRM Code is that victims of APP scams are reimbursed.
- C was expelled from the Federation of Master Builders (FMB) so it would appear others have made similar complaints.

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.

It's important to note that I am not deciding a dispute between Mrs S and C – I don't have the power to look into a complaint about C. My role is limited to deciding the dispute between Mrs S and Santander. So, I need to decide whether Santander acted fairly, when concluding that this amounted to a civil dispute and not a scam.

It isn't in dispute that Mrs S authorised the payments that left her account. The starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transaction. But she says that she has been the victim of an Authorised Push Payment (APP) scam and that C's intent from the start was to deceive her.

Santander is a signatory to the voluntary CRM Code. This is a scheme through which victims of APP fraud can sometimes receive reimbursement from the banks involved. But the CRM code does not apply to "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, or defective, goods or services.

The CRM Code defines what is considered an APP scam and this includes where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent.

So, I can only apply the CRM Code to Mrs S' payments or consider Santander's liability to her under the CRM Code, if I'm satisfied that the payments were made as part of an APP scam. This is different to a situation where C didn't fulfil the agreement with Mrs S due to, for example, the business failing, ill health, a breakdown in the relationship or dissatisfaction with the quality of the work - which would be considered a civil dispute not covered by the CRM Code.

To decide whether Mrs S is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mrs S thought this purpose was legitimate.
- The purpose the recipient (C) had in mind at the time of the payments, and whether this broadly aligned with what Mrs S understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

From the evidence I have seen I'm satisfied Mrs S made payments for building works which was a legitimate purpose.

I've gone on to consider the purpose C had in mind at the time he took the payments. After careful consideration, I'm not satisfied there is enough evidence to conclude C didn't intend to act in line with the purpose agreed with Mrs S and will explain why.

B had been a UK incorporated company since 2018, so was a well-established company at the time Mrs S made payments.

I appreciate that work wasn't completed and that some of the work C and his team did was substandard. But the fact a substantial amount of work was done over a number of months doesn't indicate an intent to scam. Mrs S believes that the work was completed to entice her to make further payments, but there is no persuasive evidence that this was the most likely scenario.

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. In this case I note that C said his wife had an accident, but the email Mrs S has provided shows that he put plans in place for work to continue.

This service has received third party information from the receiving bank, which I can't disclose due to data protection laws. However, this information doesn't allow me to conclude that it's more likely than not the funds weren't used for their intended purpose.

I also haven't been provided with evidence following an investigation by any external organisation (such as Trading Standards or the police) which concludes that C intended to use Mrs S' funds for a different purpose.

It is for Mrs S to demonstrate that C was acting fraudulently and not for Santander to prove this wasn't the case. I'm not persuaded that Mrs S has done so. The fact that C has a previous conviction for misrepresentation and not completing work, and has liquidated other companies, doesn't demonstrate that he didn't plan to use her funds for the intended purpose some years later.

If material new evidence comes to light at a later date Mrs S can ask Santander to reconsider her fraud claim.

I also don't think Santander had any reason to intervene when the payments were made as they were in line with Mrs S' usual account activity. But, even if it had, I don't think Santander would have had any concerns that Mrs S may be at risk of financial harm.

I know this will be a huge disappointment to Mrs S. I sympathise with the position she has found herself in, and I'm in no way saying she doesn't have a legitimate grievance against C/B. But this type of dispute isn't something that the CRM Code covers. So, I don't think Santander acted unreasonably in not considering Mrs S' claim under the CRM Code.

So, for the reasons I've explained above, I don't think it would be fair to hold Santander responsible for the money she's lost.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 7 January 2025.

Jay Hadfield
Ombudsman