

The complaint

Mr P complains that Santander UK Plc won't refund the money he says he lost to a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of what happened here.

Mr P engaged the services of a builder – which I'll call N – to do some work at his home. Mr P agreed a price for the work, and paid a deposit of £5,480 to secure a discount on the total price of the job. A start date for the work had been agreed, but N delayed this due to illness, and ultimately the work was never started. N went into liquidation a few months later. And when Mr P discovered that other people had had similar experiences with N, he contacted Santander to say that he thought he had been scammed.

Santander looked into what had happened, but said Mr P wasn't eligible for a refund under the relevant regulations as it didn't think he had been the victim of a scam. It said it thought this was more likely a private civil dispute between Mr P and the builder.

Unhappy with Santander's response, Mr P brought his complaint to this service and one of our investigators looked into things. But they agreed with Santander that this was most likely a civil dispute, and so Mr P was not entitled to a refund of the payment he had made. Mr P remained unhappy, he says N knew it was in significant debt but still took on (and took payment for) work it would be unable to complete. He says Santander should have been aware of N's position, and should have stepped in to question him about the payment he made to N.

As the case could not be resolved informally, it's 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.

Having done so and having thought very carefully about Santander's actions, I agree with the findings set out by our investigator. I do appreciate how disappointing this will be for Mr P but, whilst I'm sorry to hear of what's happened, I don't think I can fairly hold Santander liable for his loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I can quite understand why Mr P feels that he has been scammed, 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 and for a dispute to exist.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which Santander has signed up to and which was in force at the time Mr P made this payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether Santander therefore ought to reimburse Mr P under the provisions of the CRM Code.

The CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) 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."

Santander is of the opinion that Mr P's circumstances fall into this definition of a private civil dispute and I agree that this is most likely the case here. I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that N set out with an intent to defraud Mr P from the outset. It seems more likely to me that this is a dispute about a builder failing to complete the work agreed.

Mr P argues that N knew it would never be able to complete the work. But the evidence I've seen does not support that. While I cannot share details of what I've seen, I have had sight of N's account statements, which do appear to suggest that N was operating as a legitimate business at that time. And Santander does not appear to have had any concerns about how N's account was being operated prior to Mr P's claim. I appreciate that there may be others who are now raising similar claims to Mr P, but that isn't surprising given that N has gone into liquidation. And I don't think I can fairly say with any certainty that N knew that would happen at the time it asked Mr P for payment. I'm also aware that N was still doing some work for other customers after taking payment from Mr P, so it seems it was still operating legitimately in some capacity at that time.

With this in mind, I'm satisfied that N does appear to have been operating a legitimate business when Mr P made the payment that is the subject of this complaint. And it's clear from what has happened that Mr P paid a deposit for services which have not been provided, so I'm satisfied that this situation meets the definition of a civil dispute as set out in the CRM code, this means that Mr P is not entitled to a refund from Santander under the Code.

I appreciate Mr P will not agree, but from Santander's point of view this situation doesn't display the hallmarks most typically associated with a scam. I know this will be a huge disappointment to Mr P. I appreciate he feels about this case, and that he has lost a significant amount of money here. And I do not intend to suggest that there is no issue at all between Mr P and N, clearly there is, or that N didn't go on to potentially take payments from other parties which were not for legitimate purposes. And some of what Mr P has told us does suggest that N wasn't always acting professionally, but that does not mean that this was a scam, rather than a case of poor business practices.

The evidence I have seen regarding Mr P's specific circumstances doesn't lead me to conclude that it's more likely N never intended to fulfil its agreement with Mr P, rather than ultimately being unable to fulfil the contract that it had initially entered into in good faith. So, for the reasons I've explained above, I do not consider that the payment in dispute here is covered under the CRM Code, or that it would be fair to hold Santander responsible for the money lost.

Mr P has also suggested that Santander should have intervened in the payment, given its value, and that had it done so it's likely he would have been able to do more checks on N, thereby potentially preventing his loss. But nothing I've seen suggests that, at the time the payment was made, there was any clear evidence available that would have suggested making a payment to N was risky. And given that Mr P had met a representative from N in person, and received a quote for the work, I can't see how any reasonable action from Santander would have prevented Mr P from making this payment.

I know this will be disappointing for Mr P, and I appreciate he has lost a significant sum of money here, but with what I've seen I cannot fairly and reasonably say that Santander is liable for that loss.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 November 2024.

Sophie Mitchell
Ombudsman