

The complaint

Mr Y complains that Santander UK Plc hasn't refunded him after he reported falling victim to a scam.

What happened

Mr Y contracted a local company – which I'll refer to as A – to provide and install new doors and windows at his home. He paid a deposit of £1,489.60 by way of faster payment (bank transfer) expecting to see the goods delivered and installed around eight weeks later. This was in June 2023.

A never supplied the windows and doors and no installation took place. Mr Y discovered A had entered voluntary liquidation in November 2023. Mr Y believes he's been scammed as he doesn't think A ever intended to order the goods or carry out the work it was contracted to do.

He's since found – through social media – there are other people that are in a similar position to him, where A accepted deposits but then didn't provide the goods or services they were meant to.

Mr Y has said he's been in touch with A's supplier who confirmed no order for his windows and doors had been made by A. That's despite A having told Mr Y the order had been placed.

Mr Y reported what had happened to Santander asking it to refund him as the victim of a scam. Santander considered what had happened but said it wouldn't refund the money lost. It acknowledged Mr Y had been let down by A but said it felt the matter was a civil dispute between buyer and supplier.

Mr Y was unhappy with Santander's answer and so referred the complaint to our service. One of our investigators considered the circumstances and didn't uphold the complaint. He believed Santander's conclusions to be fair and reasonable in the circumstances. His key findings were, in summary:

- It was plausible that A was a genuine company that became unable to fulfill its contractual obligations due to falling into financial difficulties;
- A was registered with Companies House in July 2021 and so had been operating for some time before Mr Y made his payment;
- There were positive reviews for A dating back to before it became a registered limited company;
- A had regularly advertised in the local magazine and Mr Y himself had found positive references and reviews;
- A was a FENSA (a government-authorised scheme that monitors building regulation compliance for replacement windows and doors) approved, suggesting it was a genuine supplier;
- A's bank statements show activity consistent with a supplier in the industry.

The complaint has been passed to me for a final decision as Mr Y didn't accept the investigator's findings.

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 disappoint Mr Y further, but I'm not upholding his complaint and for broadly the same reasons as our investigator.

In making these findings I'm not saying that Mr Y hasn't been wronged by A or that it has acted with total integrity. It's clear that Mr Y has lost out here and he isn't to blame for that. But what I can't say is that there is sufficient evidence to show a scam has taken place and that it's Santander that ought to bear responsibility for his loss.

The starting point at law, broadly speaking, is that Mr Y is responsible for payments made from his account which are properly authorised. This is confirmed in the Payment Service Regulations (2017) and his account terms and conditions. And there's no dispute here as to whether the transactions were authorised by Mr Y; he's confirmed he made the payments.

Santander is a signatory to the Lending Standards Board's voluntary Contingent Reimbursement Model (CRM) Code. The Code looks to see the victims of scams reimbursed in most circumstances, even though payments were properly authorised by the customer. But it doesn't apply to all payments made from a customer's account.

Of particular relevance here is section DS2(2)(b) which states, in defining the scope of the Code and what is not covered:

“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”

And so my assessment of Mr Y's case must include a consideration as to whether A was a legitimate supplier or whether it intended to scam him from the outset. I'm persuaded, having considered all available evidence and the specific circumstances of this complaint that the former is true, and that A was a legitimate supplier, albeit one that has failed to deliver what was contracted for and promised. It's my view that the intended purpose of accepting the payment from Mr Y was to provide the goods and services contracted for, but it became unwilling or unable to do so at a later date.

My reasoning here doesn't differ greatly from our investigator's. A had been operating for two years by the time Mr Y became a customer. And in those two years it had generated numerous positive reviews, at least some of which were seen and relied on by Mr Y.

I can see A was making payments to HMRC, although I understand it remains a creditor at liquidation. It was a member of FENSA and there are payments made from the account to merchants to be expected of a business operating in the windows and doors industry. These are all points that suggest a legitimate business was in operation.

It might be true that A was a struggling business when it accepted Mr Y's payment. That it entered voluntary liquidation with significant debts several months later would suggest that was the case. But this still doesn't mean that A set out to scam Mr Y. Even where a business is struggling it will continue to operate and it's just as – or in my view more likely than not – A was a going concern and trying to survive at the time it accepted Mr Y's payment. I don't find there's sufficient evidence to say it accepted that money with no intention of ever carrying out the work or supplying the goods.

I do acknowledge there is some information to suggest A didn't act honestly throughout. Mr Y seems to have discovered that his windows and doors were never ordered and where A told him they had been and were due to be delivered within a few weeks. But this could

also be reflective of a company trying to placate customers it was struggling to serve, rather than be an indication that a scam had taken place and that the intention was always to take Mr Y's money without fulfilling any of the contract.

I've also thought about the number of other creditors A has, and that there are numerous people that are in a similar situation to Mr Y. This also doesn't persuade me Mr Y has been the victim of a scam. It's not uncommon for a limited company to enter liquidation and have outstanding creditors, particularly when it has fallen into financial difficulties, as seems to be the case here.

That A appointed a liquidator is a further action that suggests it had been a legitimate company. Had it and its directors intended to scam people from the outset, I consider it to be more likely than not the company would have essentially been abandoned, rather than the process of voluntary liquidation followed through.

With all of this in mind I can't say that the CRM Code applies to the payment made by Mr Y. Nor can I say that Santander has acted unfairly or unreasonably in the circumstances.

My final decision

I don't uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 27 June 2024.

Ben Murray
Ombudsman