

The complaint

Mr G complains that Santander UK Plc won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In August 2022, Mr G was looking to get some building work done at his property and found a builder on an online directory of tradespeople. The builder provided a quote for the work, which Mr G accepted, and the builder then started the work as agreed.

Mr G made an initial payment of £1,000 to the builder, to pay for materials. And as the work continued over the following weeks he made two more payments, as requested by the builder, to pay for labour. I've set out the payments Mr G made from his Santander accounts below:

Date	Amount
12 September 2022	£1,000
22 September 2022	£2,500
3 October 2022	£1,075

Unfortunately, as the work was being done, Mr G noticed a number of issues with it which he raised with the builder. After the third payment he made, Mr G noticed further issues with the standard of work being done and refused to pay anything further until the issues he'd raised were resolved. And as he remained unhappy with the work done, Mr G ultimately asked the builder for a refund of the money he'd paid. But the builder didn't return to the property and stopped responding to Mr G's communication. And so Mr G reported the payments to Santander as a scam.

Santander investigated but said it felt this was a civil dispute between Mr G and the builder, rather than a scam, as the builder had done some of the work Mr G had paid for. So it didn't agree to refund the payments he'd made, but did pay Mr G £75 as compensation for the poor customer service it provided when he raised his claim. Mr G wasn't satisfied with Santander's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the evidence suggested Mr G had been deceived about the purpose for which the payments were made, or that the builder had intended to scam him from the outset. So they didn't think Santander was responsible for refunding the payments Mr G made. Mr G disagreed with our investigator, so the complaint has been passed to me.

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, I don't think it would be fair to require Santander to refund the money Mr G paid the builder. I'll explain why below.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Santander is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

The CRM code defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says that it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier.

Mr G has mentioned other definitions of a scam, including those from specific legislation. But, when assessing Santander's obligations and responsibilities here, I think the relevant definition and test is the one I have set out here from the CRM code.

So in order to determine whether Santander should refund the money Mr G lost under the CRM code, I need to consider whether he has been the victim of a scam – or, in other words, whether he was deceived about the purpose of the payments to the point where he and the builder intended different purposes for the payments and the builder set out from the beginning with the intent to defraud him.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

The builder started working at the property as agreed, and appears to have been working there in some capacity for just over a month. And from the evidence I've seen it appears the builder carried out a significant amount of work, including stripping out, plastering walls and laying floor tiles – albeit to a poor standard. But I'd usually expect a scammer to do as little work as possible in order to get the maximum possible profit in the shortest period of time. So the builder here appears to have done more work than I'd expect from someone who never intended to complete the work.

The bank the payments were sent to has also told us that the account is still open, and it hasn't received any other scam reports against this account. But scammers usually target a number of people at once, in order to make as much money as possible before the scam is uncovered. So I'd expect to see other scam reports to the same account around the same time if the builder was operating a scam.

I've also seen evidence relating to the account the payments were made to. And while I can't share specific details of this with Mr G, the account appears to have been run as I would expect a legitimate tradesperson's account to have been and nothing I've seen about the activity on the account suggests it was being used to operate a scam at the time.

Mr G has said the builder used a false address and different contact details to avoid screening or accountability, and isn't listed on the government's register of limited companies. And I recognise that this suggests the builder wasn't acting as I would usually expect a professional company to. But acting unprofessionally does not mean the builder was operating a scam. And I don't think any of these things necessarily mean the builder didn't intend to carry out the agreed work.

Mr G has also mentioned that several other organisations have said he is a victim and that the builder wasn't acting correctly. But these organisations aren't necessarily applying the same test our service must apply, or don't necessarily have to reach the same evidential standard our service must reach before making their findings. As I explained above, I think the relevant definition and test is the one I have set out here from the CRM code. And I don't think what Mr G says these other organisations have said means this test has been satisfied.

I appreciate that the work at Mr G's property was left unfinished or done to such a poor standard that much of it will have to be re-done. But this, by itself, does not mean that he has been the victim of a scam as tradespeople can fail to complete work or complete work to a poor standard for a variety of reasons.

I must make a decision on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely the builder here was attempting to operate as a legitimate business at the time and intended to complete the work, but that other factors ultimately meant the building work wasn't completed.

I don't think the evidence I've seen suggests the builder deceived Mr G about the purposes of the payments or set out from the beginning with the intent to defraud him. I think both Mr G and the builder's intentions for the payment were the same – to carry out the agreed work. So I don't think the circumstances here meet the definition of a scam from the CRM code.

And so I don't think the payments Mr G made to the builder are covered under the CRM code, or that Santander should be required to refund the money he lost.

I sympathise with the position Mr G has found itself in, and I'm in no way saying he did anything wrong or that he doesn't have a legitimate grievance against the builder. But I can only look at Santander's responsibilities and, for the reasons I've explained above, I don't think it would be fair to hold Santander responsible for the money he lost.

Santander has paid Mr G £75 as compensation for the delays and lack of contact he experienced from it when he raised this claim. And, from what I've seen, I think this is fair and reasonable compensation for the distress and inconvenience this poor customer service caused him. So I don't think it would be fair to require Santander to pay any further compensation.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 May 2024.

Alan Millward

Ombudsman