

## **The complaint**

Mrs W complains that Santander UK Plc ('Santander') won't refund the money she lost after falling victim to a scam.

## **What happened**

In November 2022, Mrs W was interested in getting solar panels installed and placed a job advert on an online services marketplace. Mrs W was contacted by a company who I'll refer to as S. They arranged for a staff member to attend Mrs W's home to discuss the work Mrs W wanted and to provide a quote.

The quote was for just over £10,000. Mrs W was given an invoice in a company's name – who I'll refer to as S. However, Mrs W was asked to make payment to another company I'll refer to as C. C was a construction company. Later Mrs W received an invoice from a separate company who I'll refer to as E. Mrs W was told that the work would be completed by 15 December 2022.

The original invoice required a 50% deposit to be paid upfront, with two further payments of £2,500 each. Mrs W asked for the invoice to be amended with a 50% deposit paid upfront, and the remaining 50% to be paid on completion. Mrs W didn't receive an updated invoice, but she made two payments from her Santander account on 8 November. The first payment was for £25, and the second payment was for £5,222. This represented 50% of the total invoice value.

Mrs W chased the revised invoice on 15 November, but still didn't receive it. Mrs W has given us messages between her and D, who was a director of C. D was her contact in relation to the work that was to be completed.

On 15 December 2022, no start date had been agreed and Mrs W's son contacted D raising concerns. They asked that Mrs W be refunded, or for confirmation that work would be completed within four weeks.

Mrs W was given a number of excuses as to why work hadn't started and sent a letter to C's registered address when she had difficulty contacting D via messaging. In total Mrs W sent three letters, none of which elicited a response. Ultimately, no work was completed and Mrs W wasn't issued a refund, so she raised a fraud claim with Santander in January 2023.

Santander are a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) but say Mrs W's payments aren't covered by the Code. Santander say they declined Mrs W's fraud claim as the matter is a civil dispute between her and C.

Mrs W wasn't happy with Santander's response, so she brought a complaint to our service. An investigator looked into Mrs W's complaint and upheld it. The investigator felt Mrs W had been the victim of an APP scam, which meant her payments are covered by the CRM Code. The investigator recommended that Mrs W be fully refunded.

Santander disagreed with the investigator's opinion, saying C is an active company on Companies House and that no prosecution or charges had been brought by the police yet. Santander asked an ombudsman to review the case.

Having reviewed the case, I intended reaching a different answer than the investigator. So, I wanted to share my reasoning with both parties and give them the opportunity to respond before I issued a final decision. On 13 March 2024, I issued my provisional decision.

### **My provisional decision**

In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position in law is that Santander are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

#### *Is Mrs W entitled a refund under the CRM Code*

Santander are a signatory of the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

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

In order to decide whether the circumstances under which Mrs W made her payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mrs W thought this purpose was legitimate.
- The purpose the recipient had in mind at the time of the payments and whether this was broadly in line with what Mrs W understood the purpose to be.

And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

In this case, Mrs W was making the payments to C in order for solar panels to be installed on her roof. I can't see anything that would suggest Mrs W didn't think this was legitimate.

So, I've gone on to consider what purpose C had in mind and whether it was in line with what Mrs W thought.

In reaching an answer on what purpose C had in mind, I've considered the wider circumstances surrounding C, its directors and any linked businesses. The key information to this case is:

- C is an incorporated UK Company which had been operating since July 2022. I note that C currently has an active proposal for strike off – however that wasn't in place at the time Mrs W made the payment.
- Two separate companies were named on the invoice that Mrs W was given. One of the other companies, S, is an incorporated UK Company which had been operating since March 2019. It is currently in liquidation but the application to strike off wasn't made until August 2023. The second company, E, is also an incorporated UK company which had been in operation since May 2022. In March 2023, there was a resolution to wind up and it is currently in liquidation.
- The applications for strike off or liquidation are unusual and could be considered suspicious, as they all appear to happen around the same time and also appear to be closely linked to D becoming a director of S, in addition to him being the director of C. But, suspicious behaviour, or concerning information about the companies isn't sufficient to say what the intention was at the point that Mrs W made the payments in November 2022, which was prior to the applications for strike off and liquidation.
- The police have told us, and Mrs W, that they are investigating all three of the companies that I've referred to and that search warrants have been issued. However, this investigation is still at a very early stage, the police are unable to confirm what charges will be made against the parties involved. Also, even when charges have been laid, that is no guarantee that a conviction will be obtained or what that conviction may be in relation to, for example, money laundering etc. It's possible that if charges are laid, and if the case goes to court, that the conviction and evidence may not support that at the time Mrs W made her payments, that C took the money through dishonest deception with no intention to provide the service Mrs W had paid for.
- We've received third party information from the receiving bank, which I can't share with Mrs W. But it doesn't satisfy me that C had a different purpose in mind when it took Mrs W's payments.

Taking all of these points into consideration as a whole, I'm not satisfied that there is sufficient evidence to say C took Mrs W's money with a different purpose in mind or through dishonest deception. On that basis, I'm not satisfied that I can safely conclude that Mrs W's payments meet the definition of an APP scam as per the CRM Code, therefore I can't fairly ask Santander to refund her under the CRM Code.

*Is there any other reason I can fairly ask Santander to refund Mrs W*

I've also thought about whether Santander could've prevented Mrs W's loss when she made the payments. I would expect Santander to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. In situations where potential fraud is identified, I would expect Santander to intervene and attempt to prevent losses for the customer.

Having carefully considered the information available at the time Mrs W made the payments, I'm not satisfied that intervention by Santander would've made a difference. I say this because all of the information Mrs W had suggested she was dealing with a legitimate business, including:

- Mrs W had posted the job advert on a genuine online services website and been

contacted in response to that advert.

- A staff member then attended Mrs W's home, discussed the work that was to be completed and provided a quote for the solar panel installation.
- The invoice that Mrs W was given was provided by a business, which was UK incorporated and appeared to be operating legitimately at the time of the payments.
- There were also two other companies referenced on the invoice as involved in the installation. Both of these companies were UK incorporated, operating at the time and their trade involved solar panels.

Taking into account the information that was available when Mrs W made the payments, I'm not satisfied that based on questions Santander would've asked, they would've potentially identified that Mrs W may've been the victim of a scam. On that basis, I'm not satisfied that they missed an opportunity to prevent Mrs W's loss.

I'm really sorry to disappoint Mrs W, as I know that she's lost a substantial amount of money, and I'm not saying that she hasn't suffered a loss in this situation. But I'm not satisfied that there is currently sufficient evidence to say that her situation meets the definition of an APP scam, which is required in order for me to consider Santander liable under the CRM Code.

My provisional decision was that I didn't intend to uphold the complaint

### **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.

Santander haven't responded to my provisional. However, Mrs W has provided a detailed response and raised a number of points, including (but not limited to):

- D, C, S and E never had any intention of carrying out the work.
- According to Companies House, C is involved in the construction of domestic buildings and S are manufacturers of plastic products. There's no evidence either company is a solar panel installer.
- Mrs W never got an invoice from C, which is what they requested as they were paying C.
- Three letters were sent to D who never responded to them.
- Santander haven't satisfactorily explained why they deemed it a civil dispute.
- The police have deemed this as criminal fraud. Two arrest warrants have been issued and two linked suspects were arrested and released on bail. More arrests are due once a file has been given to CPS regarding charges.
- The information available relating all three companies, C, S and E is sufficient to say this was a scam.
- Over 40 elderly or vulnerable people have lost money as a result of this scam.

I'm really sorry that Mrs W has lost this money and accept that she's not the only person who has lost money as a result of the actions of C, S, E and D. However, having lost money isn't sufficient in and of itself to say that the circumstances under which Mrs W made the payments meets the definition of an APP scam under the CRM Code.

I've spoken to the police officer involved in the case and it's clear that they are still investigating the companies and people involved. The police officer believes that there will be charges but was unable to confirm what those charges would be until their investigation is complete, so at this stage it is just his opinion.

I appreciate all of the points Mrs W has raised as to why she believes she was the victim of a scam and is entitled to a refund by Santander. But, without evidence that charges have been made, which specific charges were/will be made, and which parties are being charged, there isn't sufficient evidence for me to safely conclude that Mrs W's payments are covered by the CRM Code. As I've explained to Mrs W, once the police have finished their investigation and charges have been made, Mrs W is free to ask Santander to reconsider her fraud claim based on material new evidence. And, if she is unhappy with Santander's response, she can bring a new complaint to our service.

Mrs W has raised concerns about Santander's lack of explanation around why they considered the matter to be a civil dispute. I appreciate that it may've been helpful for Santander to have provided a fuller explanation, but they're only required to tell Mrs W the outcome of their investigation and the answer they've reached in relation to her claim – which they've done. So, I can't fairly say they've done anything wrong.

I understand why Mrs W disagrees with the answer I've reached and my interpretation of the evidence. But, having carefully considered all of the points that Mrs W has raised and all of the reasons why she believes she is entitled to a refund under the CRM Code, I don't have sufficient evidence to safely conclude that the circumstances under which Mrs W made the payments meets the definition of an APP scam. On that basis, I can't fairly ask Santander to refund Mrs W because of any obligation under the CRM Code.

And, I'm not satisfied that when Mrs W made the payments, that intervention by Santander would've made a difference or prevented her loss. I say this because all of the information available at the time Mrs W made the payments, suggested that she was dealing with genuine companies.

Having carefully considered all the evidence and information Mrs W has provided, I'm not satisfied that I can fairly ask Santander to reimburse her.

### **My final decision**

My final decision is that I don't uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 9 May 2024.

Lisa Lowe  
**Ombudsman**