

## Complaint

Mr and Mrs A are unhappy that Santander UK Plc didn't reimburse them after they told it they'd fallen victim to a scam. This is a joint complaint, but it was brought by Mr A. For simplicity's sake, I've generally referred to him in the text of the decision.

## Background

In late 2022, Mr and Mrs A decided to replace the windows at their home. They looked online and found a company that was operating in their local area. An employee of that company visited them at home to quote for the works. A price was agreed, and Mr A paid a deposit of £4,318. Shortly afterwards, they asked to be paid the balance in full before the installation works had been completed. According to Mr A, this wasn't consistent with what they'd agreed. He didn't want to go ahead with this particular company and asked that it return his deposit. The company refused.

Mr A told Santander that he'd fallen victim to a scam. According to him, the individual who had visited him at home had no association with the actual company he thought he was dealing with. It looked into things, but it didn't agree to uphold his complaint. It said:

*"Based on the information you provided, this payment appears to be the subject of a dispute between you and the seller of the goods/services. We understand this is disappointing. If you want to pursue recovery of these funds, you'll need to either attempt to contact the company/individual beneficiary directly or you'll need to report this to the police if you haven't already done so."*

Mr A wasn't happy with that response and so he referred the complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator agreed with Santander. She thought that the company was most likely operating legitimately at the time and so it was fair to treat this as a civil dispute, rather than a scam. She also didn't think Santander could've done anything more to help with recovering the funds from the account they were paid into.

Mr A disagreed with the Investigator's opinion. He said that the Investigator can't definitively say that the company was legitimate without doing a thorough investigation, including attending the premises, interviewing the person who visited him at home and carrying out a thorough audit of company documents. This hasn't been done and so he considers this assumption to be ill founded.

He also disagreed that Santander didn't have the power to recover their money from the receiving account. He says that he asked Santander to seize assets in the company's account, and it should've done so.

As Mr A disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

## Findings

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

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 2017 and the terms and conditions of the customer's account. However, that isn't the end of the story. Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams in all but a limited number of circumstances.

However, the Code doesn't apply to all transactions. For a payment to be covered, it needs to meet the Code's definition of an APP scam which is as follows:

*a transfer of funds executed across Faster Payments where ...*

*(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*

*(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

The Code also specifically excludes what it terms "*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.*"

The Investigator said that the company appeared to be a legitimate one. Mr A says that it's not possible to come to any conclusion about the company in question unless a thorough investigation has been carried out and the director of the company has been interviewed. It's worth pointing out that this service is an informal alternative to the courts. We don't have the power to compel the director of the company to provide testimony or share internal company documents. In any case, as Mr A is the one making the complaint against Santander, the onus is on him to show that he is the victim of fraud, rather than being involved in another kind of dispute.

The question this case turns on then is whether the purpose for which Mr A made this transfer was, in fact, fraudulent. To reach a determination on that point, I need to consider what the intentions of the company and its director were – in other words, did they plan to deceive Mr A and take their money from the start with no intention of fulfilling their side of the agreement? I can't know for sure what was in the director's mind at the time, so I have to look at the available evidence and infer what their intentions most likely were. Unless that evidence shows that it's more likely than not that the director of the company intended to defraud Mr A, I can't make a finding that he is a victim of fraud, and this payment would fall outside the scope of the CRM Code.

I've considered that point carefully and, having done so, I'm not persuaded that there's enough evidence to say that he was the victim of APP fraud, as defined in the Code. That means Santander isn't expected to refund the payment.

I accept that Mr A paid the company for a service that it hasn't provided. However, it doesn't automatically follow that it has defrauded him just because it was in breach of one of the terms of the contract. I can't know if it would've performed the contract in the end, but I can

appreciate why Mr A wouldn't have wanted to take the risk of going ahead. In any case, the evidence that has been provided so far doesn't allow me to rule out other possible causes – it's at least as likely that the root cause was that the company was simply mismanaged or had cashflow issues. In those circumstances, Mr A may have a civil claim for damages for breach of contract, but it wouldn't entitle him to have his losses reimbursed by the bank under the CRM Code. Disputes of this nature, in my view, belong in the civil, rather than criminal, courts.

Mr A has said that the representative who visited him at home was an imposter and had no genuine connection with the company he thought he was dealing with. However, there's not really any evidence to support that speculation. The receiving bank (i.e. the one that operates the company's account) has shown us statements of the activity on that account. These show that the account was in the name of the same limited company Mr A thought he was paying. There's also sufficient evidence on those statements of the company making outbound payments of the sort I'd expect a window company to make. The receiving bank also told us that there's only ever been one other allegation of fraud made in connection with that account and that was over twelve months before Mr A's dispute. It doesn't seem likely, if this account were simply a vehicle through which people were being defrauded, that only one other person would've reported their concerns to their bank.

I did consider whether Santander did everything I'd expect it to do in respect of recovery of funds from the receiving account. It certainly didn't have any power to seize assets in an account controlled by a different bank and, once that receiving account was credited, the money became the legal property of the holder of that account. However, where a business receives a fraud allegation, I'd typically expect it to promptly communicate that to the receiving bank so that any remaining funds can be recovered. In this instance, I don't think Santander had any such obligation because there isn't strong enough evidence that Mr A is the victim of fraud.

It is, of course, possible that the situation may change, and new material evidence may come to light about the company. I don't know if Mr A has informed the police, but a police investigation might uncover new evidence. That could affect the outcome here. However, I have to decide the case on the facts and information before me. I'm currently not able to conclude there is convincing evidence that Mr A has been the victim of an APP scam. If new material information does come to light, at a later date, then a new complaint can be made to Santander. But I'm satisfied, based on the available evidence that I have seen and been presented with by all parties, that this is a civil dispute.

I don't say any of this to downplay or diminish what Mr and Mrs A have been through here. However, my role is limited to looking at the actions and inactions of the bank and, while I'm sorry to have to disappoint them, I'm satisfied Santander's decision under the CRM Code was correct.

### **Final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 24 May 2024.

James Kimmitt  
**Ombudsman**