

## The complaint

Mrs D complains that Santander UK Plc won't refund the money she lost when she was the victim of what she feels was a scam.

## What happened

In December 2022, Mrs D was looking to get some building work done at her property. She posted about the work on an online services marketplace and was contacted by someone who said they knew a builder who could do both the necessary planning and the building work. The builder then visited Mrs D's property and provided a quote, which Mrs D agreed to.

Mrs D paid a deposit, and the builder started the work at the property. And Mrs D then made a number of payments from her Santander account to the builder as the work progressed, which I've set out below:

Date	Amount
9 December 2022	£8,995
27 March 2023	£9,000
14 April 2023	£5,000
14 April 2023	£1,645
10 May 2023	£5,645

Unfortunately, after the third payment she made, Mrs D says the work the builder was doing slowed down. She started chasing when the work would be completed but was given a series of excuses by the builder. And after the final payment was made, the date the builder had given for completing the work passed but the work wasn't finished, and the builder ultimately stopped coming to the property or responding to Mrs D. Mrs D then reported the payments she made to Santander as a scam and asked it to refund the money she had lost.

Santander investigated but said the builder had partially completed the agreed work. So it said this appeared to be a dispute between Mrs D and the builder, rather than a scam, and didn't agree to refund the payments Mrs D had made. Mrs D wasn't satisfied with Santander's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought the evidence here suggested the builder hadn't intended to scam Mrs D from the outset, and so felt this was a civil dispute between her and the builder and Santander wasn't responsible for refunding the money she lost. Mrs D 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 Mrs D has lost here. 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.

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

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.

From what Mrs D has said, work started at the property after planning permission was granted and the builder, or their contractors or representatives, appear to have been working there in some capacity for just over two months. It also appears a significant amount of work was done, including excavation work, building brick walls, fitting insulation and partially installing two roofs and drainage.

According to Mrs D's own calculations, she has valued the work that was done at just over half of the total amount of money she paid to the builder for the work. Several parts of the work that specific payments were made for appear to have been completed entirely as Mrs D hasn't tried to claim these amounts back, including excavation work and the building of brick walls. And, in addition to the payments Mrs D made which I've set out above, she also made payments to the builder totalling just over £3,000 for planning work which appears to have been done successfully.

I appreciate that Mrs D has tried to separate the payments made to the builder for the planning work from the payments made for the building work. But when assessing the likely intentions of the builder, I think it's important to look at their actions as a whole. And so I don't think the payments made for the planning work which was completed successfully can be separated or ignored.

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 more work appears to have been done here

than I'd expect from someone who never intended to complete the work, with several parts of the work completed entirely, which I think suggests the builder did intend to complete the work here.

I appreciate that much of the agreed work at Mrs D's property was left unfinished or done to such a poor standard that it has had to be re-done. But this, by itself, does not mean that she 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.

Mrs D has said a number of other people have lost money to this builder. But where a builder suffers financial difficulty and the company is ultimately liquidated, I don't think it's unexpected that a number of clients would be affected. And I haven't been made aware of any investigation into the builder by the police or another statutory body, or of the outcome of any such investigation. And so I don't think this necessarily suggests the builder was operating a scam here.

The report from the liquidators of the builder's company that Mrs D has sent us also suggests the causes of the company's failure were unexpected costs resulting from poor work done by contractors, additional costs due to the cost-of-living crisis and a client withdrawing from a large renovation project. And I don't think any of these reasons seem implausible or suggest the builder was operating a scam.

The report also says the builder had been experiencing financial problems before the work with Mrs D was agreed. And Mrs D says the builder had stopped work on other projects before taking on her work as well. But I don't think this necessarily means the builder was knowingly operating a scam or never intended to complete her work, as tradespeople can take on work even after knowing they are in financial difficulties in a genuine effort to turn their business around – and I don't think we have clear evidence that this wasn't the case here.

I appreciate that some of the evidence Mrs D has sent us from the liquidators suggests the builder wasn't acting in the best interest of creditors. And Mrs D has sent us other evidence which also 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.

Mrs D has highlighted another case our service has considered and upheld, which she feels is similar to her circumstances. But our service considers each case individually, on its own merits, so I can't comment on any other case or how its circumstances may align or differ from Mrs D's circumstances here.

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 I can safely say the circumstances here meet the high legal threshold and burden of proof for fraud. I don't think the evidence I've seen suggests the builder deceived Mrs D about the purposes of the payments or set out from the beginning with the intent to defraud her. I think both Mrs D and the builder's intentions for the payments 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 Mrs D made to the builder are covered under the CRM code, or that Santander should be required to refund the money she lost.

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

### **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 Mrs D to accept or reject my decision before 28 June 2024.

Alan Millward  
**Ombudsman**