

The complaint

Ms O complains that Santander UK Plc ('Santander') hasn't refunded a faster payment she believes she made because of an authorised push payment ('APP') scam.

What happened

The circumstances of the complaint are well known to both parties, so I don't intend to repeat these in detail here. However, I'll provide a brief summary of what's happened.

Ms O wanted some building work doing at her home. She placed an advert on a well-known online website and a third party ('Mr A') responded. Over a period of approximately six weeks, Ms O and Mr A discussed the work to be done, the materials to be used and the overall cost.

Once all the details were agreed, Mr A asked Ms O to make an upfront payment for the cost of the materials, so these could be ordered ahead of the work starting. Ms O made a payment of £2,966 on 28 October 2023, on the understanding the work would begin on 30 October 2023.

Mr A didn't start the work on 30 October 2023 and failed to respond to Ms O's messages once the payment had been made. Ms O became concerned that Mr A had stolen her money and so she contacted Santander to report the situation as an APP scam.

Santander contacted the beneficiary bank (Mr A's bank), who put restrictions on Mr A's account. Following this, Mr A contacted Ms O to tell her that his account had been restricted and this was causing him problems. He also explained that there had been a misunderstanding about the start date, and he thought the work was due to begin on (or around) 6 November 2023.

Mr A's bank decided there had been no wrongdoing by Mr A and unrestricted his account. Santander also said that it didn't think Ms O had been scammed (the same conclusion that Mr A's bank reached) and wouldn't refund her money.

Ms O and Mr A continued to correspond, and a start date for the work was rearranged for 1 December 2023. However, Mr A failed to begin the work on the new start date and became unresponsive to Ms O's messages. So, Ms O asked Santander to reopen her scam claim, but Santander refused to reimburse her loss. Unhappy with Santander's response, Ms O contacted this service.

Our Investigator didn't uphold the complaint. They didn't think Mr A had set out to scam Ms O at the time the payment was made and considered the situation to be a private civil dispute between Ms O and Mr A, meaning Santander wasn't responsible for reimbursing the payment.

Ms O didn't agree with our Investigator, so the complaint has been referred to me to decide.

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've reached the same outcome as our Investigator. I'll explain why.

At the time Ms O made the disputed payment, Santander was signed up to the Lending Standards Board's Contingent Reimbursement Model Code ('the CRM Code'). The CRM Code provides additional protection from APP scams, but only in certain circumstances.

When Santander received Ms O's claim, it didn't think she'd been scammed and said the CRM Code didn't apply in the circumstances. For me to say that decision was wrong – and Santander should've refunded Ms O's loss in full – I first need to be satisfied that the CRM Code is a relevant consideration in the circumstances.

The CRM Code can only apply where the victim's payment meets the CRM Code's definition of an APP scam. Under DS1(2)(a) of the CRM Code, an APP scam is defined as:

“(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.”

DS2(2)(b) of the CRM Code says it doesn't apply to:

“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”

To uphold Ms O's complaint under the CRM Code, I'd need to be reasonably satisfied that it is more likely than not that Mr A wasn't planning to provide the goods Ms O was paying for. So, I've carefully considered whether the evidence suggests that Mr A was most likely the legitimate supplier of a service and whether Ms O's payment met the CRM Code definition of an APP scam at the time the payment was made.

The purpose of a payment forms part of the CRM Code definition of an APP scam. As such, the reason Ms O made the payment is a relevant consideration when determining whether the CRM Code applies in these circumstances or not. For me to say the CRM Code applies in this case, I need convincing evidence to demonstrate Ms O was dishonestly deceived about the very purpose of the payment she made.

Ms O has argued that after making the payment, Mr A's behaviour changed significantly. Prior to the payment he had always been quick to respond to her messages. However, once payment was made, he stopped responding and only resumed contact once his account had been restricted by his bank. She's also said that Mr A was using a false address on his business headed invoices. Furthermore, the fact that he didn't begin work on the rearranged start date demonstrates that he had no intention of ordering the materials she'd paid him for or carrying out the agreed work.

I can understand why Ms O believes the evidence demonstrates that she's been the victim of an APP scam. I appreciate it's possible Mr A intended to scam Ms O. However, this isn't the only explanation for what's happened.

Mr A explained that he thought a different start date had been agreed, which is why he didn't start work when Ms O was originally expecting him to. I've seen no evidence that 30 October 2023 was specified as a start date and so Mr A's excuse for not starting work when Ms O thought he was going to – due to a misunderstanding rather than intention – is plausible.

Mr A also explained that having his account restricted by his bank had caused him a lot of inconvenience, which is also plausible. So, whilst it's possible that Mr A never intended to do the work, it's also possible that the restrictions placed on his account resulted in the parties' relationship breaking down *after* the payment was made.

To help me reach a conclusion on whether Ms O's contention is more likely than not, I've carefully considered the information that Mr A's bank has provided. However, the information provided by Mr A's bank doesn't give me any cause for concern about how the account was being used.

Prior to Ms O's payment, there are several occasions where Mr A received similarly large credits from third parties, with payment references that suggest he was involved in other building projects. Mr A's bank has confirmed that none of the other individuals who paid Mr A reported that he had scammed them. It seems unlikely, if Mr A intended to scam Ms O, that she would be his only victim.

There are multiple transactions being made from Mr A's bank account that are consistent with the building trade, such as large payments to builders merchants – including to trade-only building materials suppliers. This suggests Mr A had been operating as a genuine tradesman at the time Ms O paid him.

Finally, it's typical activity for a scammer to immediately remove a victim's funds from their account once a payment has been made. However, that's not what happened here.

I'm really sorry that Mr A hasn't returned Ms O's money and that she hasn't received the goods either. I also appreciate that the loss she's suffered is a significant amount to her. However, based on what I've seen, I can't say it's more likely than not that Mr A intended to scam Ms O at the time she made the payment.

I'm not satisfied Ms O has evidenced that an APP scam has taken place and so I can't ask Santander to reimburse her loss. The evidence suggests Ms O has a contractual dispute with Mr A and would need to pursue him directly for the loss she's suffered.

My final decision

I appreciate Ms O feels very strongly that Mr A has scammed her. However, for the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 31 March 2025.

Liam Davies
Ombudsman