

The complaint

Mrs G complains that Santander UK Plc ('Santander') won't refund the money she lost as the result of a rogue builder.

What happened

In early 2022, Mrs G and her daughter were looking to substantially renovate their home. They were recommended a builder by a local estate agent – I'll refer to the builder as R.

R provided a quote in February 2022, which set out the work to be completed and quoted the sum of £86,872.

Mrs G and her daughter made a number of payments to R, including some cash payments. The subject of this complaint is a payment of £7,000 paid on 25 February 2022 from Mrs G's Santander account.

Mrs G says R told them that due to unrest between Russia and Ukraine, prices were likely to soar, so it was advisable they bought the wood. Mrs G says that initially the wood was going to be stored at their home, then R said it would be stored at his lock up.

Ultimately, Mrs G and her daughter aren't happy with the work completed by R, saying the quality of the work is substandard and other work hasn't been done. Some examples include the roof being left unfinished and Mrs G's daughter having to purchase material and tiles to make it watertight, fascia having to be either removed or redone, skirting not being fitted, plastering not completed etc.

Mrs G raised a fraud claim with Santander in January 2024, asking that they refund her. Santander looked into Mrs G's claim, but declined to refund her saying she has a civil dispute with R.

Mrs G wasn't happy with Santander's response, so she brought a complaint to our service.

An investigator looked into Mrs G's complaint but didn't recommend that Santander refund her. The investigator wasn't satisfied that R had a significantly different purpose for the payment Mrs G made, and felt it was likely the funds were used as part of the overall cost of the building project. The investigator felt that even if Santander had intervened, it was unlikely they would've had any concerns about the payment Mrs G was making, so it wouldn't have prevented the payment or her loss.

Mrs G didn't agree with the investigator's opinion and raised a number of concerns, most of which concern the overall building job. This included:

- Building control haven't been paid, despite funds being given to R. This should have been paid for when the planning application was confirmed, before any work commenced.
- R didn't purchase the wood as agreed. He didn't provide a merchant invoice or the

name of the merchant he bought the wood through. Also, she doesn't believe that he had a lock up, which is where he said he would store it.

- Mrs G believes that R set out with the intention to deceive them and never had any intention of completing the agreed building work.

As the case couldn't be resolved informally, it was passed to me to review,

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.

I'm really sorry to hear about the distress Mrs G and her daughter have been caused based on the work that R has completed, as well as the work that wasn't completed. I understand that they've had to make payments to other companies to get the work completed and it's caused them serious financial difficulties as well as untold stress.

It's important to note that I'll only be addressing the £7,000 that Mrs G paid as part of this complaint. Mrs G's daughter's payments have been dealt with in a separate complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

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 at law is that a bank such as Santander is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

I accept that Mrs G may have suffered a financial loss, but I'm not making a finding as to whether R owes her money. Rather, I'm deciding whether Santander can fairly be held liable for that loss.

Is Mrs G entitled to a refund under the CRM Code?

Santander have signed up to the CRM Code, which 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 does not apply to private civil disputes, for example 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 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 G made her payment meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mrs G thought this purpose was legitimate.
- The purpose the recipient (R) had in mind at the time of the payment and whether this was broadly in line with what Mrs G 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.

Mrs G was making a payment to R for building work to be completed at her property, more specifically for wood to be purchased. I haven't seen anything that suggests Mrs G didn't think this was a legitimate purpose.

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

In reaching an answer on what purpose R had in mind, the key information is:

- R was referred to Mrs G and her daughter by a local estate agent, which suggests that R was legitimately operating as a builder at the time Mrs G made her payment.
- Mrs G doesn't believe that R purchased the wood, but her daughter has referred to R attending the property and bringing wood, although she says this happened in dribs and drabs. She has also referred to seeing R in a store that provides home and building supplies purchasing wood.
- We've received information from the receiving bank that I can't share due to data protection issues. But this doesn't prove that Mrs G's funds weren't used for their intended purpose.
- It may be that R didn't purchase the wood in advance as discussed with Mrs G, or he purchased the wood at a later date. But that doesn't prove that the £7,000 wasn't used for wood or in connection with the overall building work R was doing on Mrs G's property.
- It's possible that R has experienced a change in his personal circumstances which has meant that he experienced financial difficulties. This doesn't mean that he took Mrs G's funds for a different purpose or through dishonest deception.
- We don't have any evidence from the police or Trading Standards which points to R's intentions at the point Mrs G made her payment.

Taking all of these points into consideration as a whole, I'm not satisfied that I can fairly say R took the funds with a different purpose in mind or through dishonest deception.

Based on the evidence, I'm not satisfied that the circumstances under which Mrs G made the payment meets the definition of an APP scam under the CRM Code. So, I can't fairly hold Santander liable under the CRM Code.

It's possible that material new evidence may come to light at a later date, for example from Trading Standards or the police. If that happens, Mrs G can ask Santander to reconsider her claim.

Is there any other reason I can ask Santander to reimburse Mrs G?

There is an expectation for 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. Where potential fraud is identified, I would expect Santander to intervene and attempt to prevent losses for the customer.

I'm not satisfied that Santander should've intervened when Mrs G made this payment. I say this as in the months prior she had made transfers of between £3,000 and £4,000, as well a bill payment of £5,000. She had also made some significantly larger payments of well over £7,000.

However, for completeness, even if Santander had intervened when Mrs G made the payment of £7,000, I'm not satisfied that it would have prevented her loss. I say this as I'm not satisfied that any questions Santander would've asked should've concerned them that Mrs G may be at risk of financial harm. R had attended the property and building work had started. So, I think it's unlikely that Mrs G would've said anything that meant Santander shouldn't have processed her payment instructions.

I realise that Mrs G will be very disappointed, but having carefully considered the evidence, I'm not satisfied that I can fairly hold Santander liable for her loss or ask them to refund 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 G to accept or reject my decision before 27 March 2025.

Lisa Lowe
Ombudsman