

The complaint

Mr A complains that Santander UK Plc won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In July 2023, Mr A was looking to get some building work done at his property and was recommended a builder by a friend of his who also worked in the trade. Mr A met the builder and agreed a price for the work to be done. And he then made a number of payments from his Santander account to the builder, to pay for labour and materials.

Unfortunately, some of the materials he paid for weren't delivered and the building work wasn't completed. So Mr A reported some of the payments he had made to the builder to Santander as a scam, and asked it to refund the money he had lost.

Santander investigated but said, based on the information it had seen, it felt this was a civil dispute between Mr A and the builder – rather than a scam. So it didn't agree to refund the payments Mr A had reported. Mr A wasn't satisfied with Santander's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think there was sufficient evidence to say the builder had no intention of supplying the materials or finishing the work. So they didn't think the circumstances here met the definition of a scam, or that Santander should have to refund the payments to Mr A. Mr A 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.

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 relevant definition of a scam from the CRM code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says 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 Mr A has been the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for the payments was legitimate, whether the purposes he and the builder intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the builder.

I'm satisfied Mr A made the payments here with the intention of paying for building work. And I haven't seen anything to suggest he didn't think this was legitimate. But I'm not satisfied the evidence I've seen shows that the builder intended a different purpose for the payments, or that Mr A's and the builder's purposes for the payments weren't broadly aligned.

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.

The builder started the agreed work at Mr A's property and appears to have been working there, at least on and off, for a number of weeks. And they appear to have been doing enough work that Mr A was happy, at least at the time, to make some of the payments it was agreed he would make as the work went on.

I appreciate Mr A has tried to separate the payments made to the builder for work that was completed from the payments made for work that was not completed or for materials that weren't delivered. But when assessing the likely intentions of the builder, I think it's important to look at their actions as a whole. So I don't think the payments made for work that was completed successfully can be separated or ignored.

The payments Mr A made to the builder that he hasn't disputed or for work that was completed successfully continue for the entire period of the payments Mr A is disputing, and total a significantly larger amount than the payments he is disputing – which I think suggests a significant amount of work was complete successfully. Mr A's descriptions of the completed work also suggest a significant amount of work, and certainly more than just initial clearing or preparation work, has been done.

But 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, which I think suggests the builder did intend to complete the work here.

The bank the payments were made to has also told us they didn't have significant concerns about the way the account was run at the time Mr A's payments were made. And I've seen evidence relating to the account the payments were made to, and while I can't share any details of this evidence, I think it shows the account appears to have been run at the time as I would expect a legitimate tradesperson's account to have been run and doesn't suggest it was being used to operate a scam.

I recognise Mr A has raised a number of issues about the company the builder said they worked for and the way he was asked to make payments to the builder. But while these issues might suggest the builder wasn't acting as I would expect a professional tradesperson to, acting unprofessionally does not mean the builder intended to operate a scam. And I don't think any of the issues Mr A has raised mean the builder didn't intend to carry out or complete the work at his property.

I also haven't been provided with evidence of any investigation by an external organisation which concludes that the builder was operating a scam.

Based on the evidence I've seen, I think it's more likely the builder here intended to complete the agreed work, but that other factors ultimately meant the building work wasn't completed. While Mr A has highlighted a number of issues with the actions of the builder, I don't think I can safely say the circumstances here meet the high legal threshold and burden of proof for fraud or the specific definition of a scam I must apply here.

I don't think the evidence I've seen suggests the builder deceived Mr A about the purposes of the payments. I think both Mr A 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 Mr A made to the builder are covered under the CRM code, or that Santander should be required to refund the money he lost.

I sympathise with the position Mr A has found herself in. I appreciate that his property was left in an incomplete state, and he may have to pay another builder to complete the work. I'm also in no way saying he did anything wrong or that he 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 he lost.

It's possible that material new evidence may become available at a future date, which suggests that the builder did take the payments using dishonest deception. If that happens, Mr A can ask Santander to reconsider his claim for these payments and, if not satisfied with its response, bring a new complaint to our service.

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 Mr A to accept or reject my decision before 10 April 2025.

Alan Millward
Ombudsman