

The complaint

Mr and Mrs S complain that Santander UK Plc ('Santander') won't refund them money they paid as a result of what they believed to be a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, I understand it to be as follows.

In or around early 2022, Mr and Mrs S were in the process of building a new home and were looking for a kitchen supplier. Through an online website, they found a company that was recommended, who I'll refer to as 'A'. Mr and Mrs S saw positive reviews about A, showing that people had work completed by it that was satisfactory. They also saw some negative reviews, but have said at the time these didn't raise any alarm bells.

Believing A was a legitimate company, Mr and Mrs S made enquiries and entered into communications with A. They met with representatives of A, to talk through plans and also visited A's show house to discuss design. Mr and Mrs S agreed for A to complete the work and a contract was drawn up, requiring them to make payments in instalments.

Over the course of a number of months, Mr and Mrs S continued to be in regular communication with A, discussing and arranging things such as amendments to plans and the ordering of appliances and work tops. They made the following payments to the account details that A provided (the second payment being VAT that A told Mr and Mrs S they had to pay);

21 March 2022	£10,015
23 March 2022	£1,403
2 November 2022	£11,082

Mr and Mrs S were told the kitchen would be delivered in December 2022, but when this time arrived they were told it had been delayed until the following January. Mr and Mrs S continued to communicate with A and suggested to it that the final payment should be withheld until the kitchen was delivered. In response, A said that a delivery date had been provided, but as the final payment, required by contract, hadn't been received it had been cancelled. However, the kitchen was never delivered or fitted, and no materials or appliances were provided to Mr and Mrs S.

Mr and Mrs S have said that they carried out further research into the company and have seen further negative reviews, with other people having similar experiences to them. So they believe they have been the victims of a scam. Through their representatives, they raised the matter with Santander. Santander are a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) and considered the claim under the Code. But Santander deemed the matter to be a civil dispute between the parties – not a scam. As such, Santander declined to refund Mr and Mrs S the money they'd sent.

Unhappy with Santander's response, Mr and Mrs S brought their complaint to this service. One of our Investigators considered all the evidence and felt Santander had reached a fair and reasonable outcome. In summary, he thought there was insufficient evidence to suggest Mr and Mrs S had been the victims of a scam.

Through their representatives, Mr and Mrs S disagreed with our Investigator's view and so the complaint has been passed to me for a final decision.

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 thought very carefully about Santander's actions, I don't uphold Mr and Mrs S' complaint. I do appreciate how disappointing this will be for them, and I don't underestimate their strength of feeling, but I don't think I can fairly say Santander should reimburse them. I'm sorry to hear of what's happened and I can understand entirely why they feel so strongly that this money should be returned to them. But not all cases where individuals have lost money are in fact fraudulent and/or a scam.

When considering what is fair and reasonable in this case, I've thought about the CRM Code. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. But the CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) This code does not apply to:

(b) 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"

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Both Santander and our Investigator felt the payments Mr and Mrs S made formed part of a civil dispute and, as such, were not covered by the CRM Code. Mr and Mrs S disagree, they feel A has scammed them.

In order to conclude that the payments made were part of a scam, I'd need to be reasonably satisfied, from the available evidence, that A set out to defraud them. But I don't think, based on what I know, that I can safely conclude that. I don't doubt that Mr and Mrs S haven't received what they expected. And it seems quite clear they have been mistreated and let down by A. But that's not the same as them having been scammed.

I firstly need to consider the purpose of the payments and whether Mr and Mrs S thought this purpose was legitimate. I'm satisfied they did; they've explained that they believed the payment was for the supply and fitting of a kitchen and appliances. Then I need to consider the purpose the recipient (A) had in mind, at the time of the payments, and whether this was broadly in line with what Mr and Mrs S understood to be the purpose of the payments.

To be persuaded Mr and Mrs S have likely fallen victim to a fraud, I'd need to be satisfied the purpose of A receiving the payments differed from Mr and Mrs S' and that A intended, from the outset, to deceive them and likely not provide the goods/services they'd been asked to pay for. Having considered the evidence from both parties, I'm not persuaded this was the case.

I say this because from what I've seen, the purpose of A's trade is a kitchen company, including other construction installation, which is consistent with the purpose of Mr and Mrs S' use of its services. And while I understand Mr and Mrs S have indicated that there are others who have also been unhappy with the service that A has provided, this doesn't in and of itself mean that A operated fraudulently.

I'm also mindful that prior to agreeing the contract with A, Mr and Mrs S did see a number of positive reviews. I'm persuaded that overall this supports that A's intended purpose was to provide what was paid for and the reviews do also indicate that, at least in part, A has provided a satisfactory service to others previously.

When the payments were made A was registered with Companies House and according to Companies House it was, and still is, a going concern and it has been for a number of years. It is also not a common feature for this type of scam, for a fraudster to provide any kind of service or goods at all – but in the circumstances of this case Mr and Mrs S did create plans, make adjustments to those plans and carried on with detailed communications with A over a number of months.

There may have been a number of reasons why A might not have provided the service promised. Unfortunately situations do arise where retailers/merchants/suppliers can operate poorly, or be so chaotically mismanaged to the point where agreed services or goods aren't provided. But that doesn't necessarily amount to evidence of an intent to defraud. It's at least as likely that the root cause was incompetence and unprofessionalism on A's part.

I'm mindful Mr and Mrs S' representatives have said that Mr and Mrs S spoke to somebody who isn't showing on Companies House as someone that holds significant control. But I'm not persuaded that this in and of itself is enough to suggest that what is happening is a scam. And I can see from the communications that Mr and Mrs S have shared, that they had with A, that they have received communication and had discussions with named people who were registered as Directors of A with Companies House.

I've also considered the beneficiary bank account (the bank to which the money was sent). While I can't go into too much detail, for data protection reasons, the beneficiary bank has confirmed that the beneficiary account is a legitimate account and it didn't have any concerns regarding how the account was being operated. As well as this, I'm not aware of any ongoing investigations by Trading Standards, or any other authority, which would lead me to safely conclude there was an intent to defraud.

After taking everything into careful consideration, so the testimony and evidence provided by both parties, on balance, I can't safely conclude what has happened here meets the high legal threshold and burden of proof for fraud. Rather, this appears to be a case of a supplier, failing to honour its agreement by not providing the goods and service that was expected.

This is not to say that there is no issue at all between A and Mr and Mrs S, clearly there is. But on balance, I haven't found the evidence shows this was an APP scam covered by the CRM Code, so I do not find the code applicable to the payments made. Neither do I otherwise find Santander is liable to refund Mr and Mrs S for any other reason. I don't think it reached an unreasonable or unfair outcome in deciding not to refund them.

For the reasons I've given, as it stands, there is not enough information for me to safely say this is a scam. However, should new material evidence come to light, the first port of call for Mr and Mrs S would be to go back to the Bank for them to see if this new evidence would lead it to reconsidering its position.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 27 December 2024.

Stephen Wise
Ombudsman