

The complaint

Mr L is unhappy that Santander UK Plc won't refund the money he lost to what he believes was a scam.

What happened

Mr L was looking for a builder to carry out some repairs to the chimney. He had asked several builders to provide a quote for the work and one builder – which I'll call C – responded. He came to Mr P's property on 30 June 2023 to start work, and apparently looked inside Mr P's roof at that time. C then claimed that there was significant damage to the rafters in the roof from rot and woodworm. Mr L was told his roof could collapse, and so agreed for C to do the necessary work. C quoted £13,000 to £14,000 for the work, and Mr L paid a £6,000 deposit.

C began work, but Mr L became suspicious when there were no rotted rafters evident in the skip that was at his property. He was able to access the roof space, and discovered that no rafters had been replaced. Mr L went on to ask an independent roofer to also look at his roof, and they confirmed that there were no signs of damage from rot or woodworm. When Mr L raised this with C, C became aggressive, left the property, and has not returned or responded to attempts at contact.

Mr L raised the matter with Santander, he said he had been the victim of a scam. Santander looked into Mr L's complaint but did not consider it was liable for his loss, it considered the matter to be a civil dispute between Mr L and the builder.

Unhappy with Santander's response, Mr L brought his complaint to this service. Our investigator looked at what had happened, but they agreed with Santander that this was most likely a civil dispute, and that Mr L was therefore not entitled to a refund of any of his loss.

Mr L remained unhappy, he maintained that C set out to scam him from the start, so as agreement couldn't be reached, the complaint was passed to me for a decision. I issued my provisional decision on this complaint on DATE, explaining why I felt that Mr L had been the victim of a scam, and so should be reimbursed for his loss.

Mr L accepted my findings, Santander did not. It has questioned what work was agreed and completed, and maintains that there is not enough evidence to say that Mr L was the victim of a scam rather than a rogue trader.

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 my provisional decision I explained the following:

"It is not in dispute that Mr L authorised the payment to the builder. So, he is presumed liable for that payment under the Payment Services Regulations 2017 (PSRs). However,

Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Code (the CRM Code). This code sets out a basis on which firms should reimburse customers if they fall victim to an authorised push payment (APP) scam.

The code specifically excludes what it refers to as "private civil disputes" from its application. As an example of such a scenario, it says:

"... 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 find that Mr L's loss falls within the remit of the code, I need to be persuaded that it's more likely than not that he was a victim of fraud. This isn't a straightforward question to address. Essentially, I need to be persuaded that the builder he hired had a settled intention to scam him. But, of course, I cannot know what was in the mind of the builder at the time. So, I must infer what his intentions were based on what the available evidence tells me.

I think this is a very finely balanced case – it is very difficult to know what the builder's intentions were. However, there are a number of factors which persuade me that the builder had no intention to carry out the work he had been engaged to do. On balance, I'm satisfied that the evidence supports the conclusion that this was a scam, rather than civil dispute.

I appreciate Santander has argued that as some work had been carried out this should be deemed a civil matter. While many scams involve non-existent goods or services, 'rogue trader' scams generally involve some work being carried out on a property – normally to a poor standard. Such scams have a long history and the bank will be well aware of them. So, I don't think the fact that some work was done is determinative – I think it's more likely it was a ploy and was part of the scam. It helped to convince Mr L that work was being done, for a short period at least.

And the main work that the builder was engaged to do was the replacement of internal rafters which he had claimed were rotted and infested with woodworm, Mr P has provided photographs as well as a report from another roofer which show that no work was done on the internal rafters, and that they were not in the condition that C had claimed they were in. Given that Mr L has said C told him eight rafters had been replaced, this evidence clearly contradicts what C was claiming. Mr L has also told us that, when C first told him that work needed doing, C had shown him pieces of wood that were damp and rotting and with evidence of woodworm. Given that there appears to be no evidence of such damage in Mr L's roof, it seems evident that C was fabricating evidence of work that needed doing. To me, this is a clear indication that C intended to defraud Mr L from the outset.

Overall, the weight of evidence I've seen persuades me this was a scam, not a civil dispute. So, the CRM code applies – meaning the starting position is that Santander should refund Mr L.

The Code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr L fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the Code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made, or*
- The customer made the payment without a reasonable basis for believing that:*

- *the payee was the person the customer was expecting to pay;*
- *the payment was for genuine goods or services; and/or*
- *the person or business with whom they transacted was legitimate.*

There are further exceptions within the Code, but these don't apply here.

Having thought carefully, I'm satisfied that Mr L made this payment with a reasonable basis to believe that it was to a genuine business for a legitimate service. I also do not consider that he ignored what we would consider to be an effective warning.

When Mr L engaged C's services he had checked their details on a well-known website which reassured him they were legitimate. He also received a fairly detailed and professional looking quote, and was shown what he believed to be clear evidence that there was a problem with his roof. So, I'm satisfied that Mr L would not have known that C was likely to be acting dishonestly when he made the payment. And when Mr L did begin to have concerns, he took steps to check the work that was being done, confronted C, and made no further payments.

With all of this in mind I don't think Mr L acted unreasonably here. I consider that he had a reasonable basis for believing he was paying a genuine supplier for a legitimate service.

I'm also not persuaded that the warnings given during the payment process were enough to undermine the reasonableness of Mr L's belief. When Mr L made the payment he selected 'paying for services' as the payment reason, and so received a warning relevant to that purpose. But given the circumstances here, this warning would not have been relevant to Mr L's actual situation, it warned about email intercept scams, not about rogue traders. So, this warning would not, in my mind, have rung alarm bells for Mr L.

So, in summary, I don't consider that Santander can reasonably rely on any of the relevant exceptions in the CRM Code. It follows that I consider Santander should have reimbursed Mr L under the Code."

Santander has provided a detailed response to my provisional decision. In summary, it has asked whether Mr L received an invoice for the roof repairs and questions how much of the work that was agreed has actually been completed. In essence, Santander feels that as some work was done (albeit not to a good standard) it is not clear that this was a scam, rather than a case of a rogue trader.

Firstly, C being a 'rogue trader' does not mean that they cannot also have scammed Mr L. For clarity of the sequence of events here, my understanding is that Mr L initially engaged C to fix a small problem with his chimney – and received an invoice for that work with a quote of a few hundred pounds – but when C attended his property they told him they had identified serious issues with his roof, and a new invoice was issued. That new invoice was for a 'new roof on back' and asked for a £6,000 deposit, the payment that is the subject of this complaint. So, while Mr L had initially sought out C to repair his chimney, the work he actually engaged them to do was to replace his roof.

And with all the evidence I have seen I am satisfied that C induced Mr L to make this payment for a new roof using deception. Mr L has provided us with detailed recollections of what he was told and shown by C, and I have seen nothing to make me doubt those recollections. In my view it is clear that C fabricated evidence of damage to Mr L's roof, and that the issues C claimed the roof had (damp, rot, and woodworm) did not exist in reality.

The photographs and report that Mr L has provided from the second roofer support this. I therefore think it is clear that C did set out to scam Mr L.

I appreciate that some work was done, but this appears to have been done to convince Mr L that work was ongoing, rather than to actually fix any of the problems C claimed to have found in Mr L's roof.

So, while I appreciate Santander taking the time to respond, none of what it has said changes my view that Mr L was the victim of a scam, and therefore should be reimbursed for his loss under the CRM Code as set out in my provisional decision.

Putting things right

To resolve this complaint Santander should refund Mr L's loss - £6,000 – plus 8% simple interest per annum from the date it declined his claim to the date of settlement.

My final decision

I uphold this complaint. Santander UK Plc, should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 November 2024.

Sophie Mitchell
Ombudsman