DRN-5430891

The complaint

Mrs M is unhappy that Santander UK Plc ('Santander') has decided not to refund the money she believes she lost to an authorised push payment ('APP') rogue trader scam.

What happened

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

In or around October 2022, Mrs M had used the services of a landscaping company / individual whom I'll call 'L'. In March 2023, Mrs M was looking to have work completed on her driveway, the side of the house and the patio area at the back of the house. Mrs M contacted L for a quote and they communicated over a couple of weeks, discussing options. As part of the discussions, L provided an address where he had carried out some work and where Mrs M and her husband could view the slabs that had been laid. Discussions around the work continued up until May 2023, where – due to some personal circumstances – Mrs M informed L that her and her husband weren't in a position to proceed with the works and if their circumstances changed, she would be in touch.

Around a year later, Mrs M got back in touch with L advising that she was in a position to proceed with works to the driveway. Discussions around the work and types of slabs to be used took place, and on 12 June 2024, Mrs M made a payment of £5,200 to L.

The works were due to start on 20 June 2024. There were delays with the work being started. L advised a digger needed repairing and the start date was moved to a week later. And then the day before the new start date L advised Mrs M that he had cut his wrist and damaged a tendon. L explained he was told he needed to rest it for three to four weeks.

On 1 July 2024, L explained to Mrs M that he had undergone the operation but was told he couldn't do anything for three to four weeks to allow it to heal. L also advised Mrs M that he had contacted the suppliers and told them to hold off on the delivery date and that everything was in order, and it was just that he needed his wrist to heal. L and Mrs M then arranged for the work to commence in a further three to four weeks' time.

On 28 July 2024, L advised he was still unable to work and needed another week. L also advised that he would try and speak with a friend to see if they could assist him.

On 4 August 2024, L let Mrs M know that he had been to the hospital and had his wrist checked out and was advised to completely rest it for a further two weeks. L advised that he could get the money back from the suppliers or Mrs M could wait until he was fully fit.

At this point, Mrs M decided she would like a refund, and when L had recovered, the work on the driveway could commence.

L then didn't refund Mrs M and provided excuses, citing charges of £50 and £100 to transfer money. L also advised that his wrist was healed, and he could start work on 26 August 2024. This was then subsequently arranged for 27 August 2024 due to a bank holiday.

L was then unable to start work on 27 August 2024, and advised he had caught Covid. Mrs M asked for the refund of the deposit, and L advised he would send it all over once it was back in his account. On the 3 September 2024 L advised that all the money was back in and he would transfer it to Mrs M before the weekend. On the 4 September 2024, Mrs M asked for an update on the return of her deposit, to which L advised that he would return it by the end of the week – 6 September 2024.

Mrs M, despite L providing assurances he would refund the deposit to avoid any criminal or legal action being brought against him, never received the refund of her deposit.

Mrs M formally complained about the matter with Santander. Mrs M also raised her concerns about the service and information that she had been provided by Santander. She says she had multiple calls while she was seeking advice and updating it on what she could do when she wasn't getting anywhere with the refund from L.

Ultimately Santander considered whether the payment Mrs M made to L was covered by the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code. The CRM Code provided additional protection from APP scams and offers reimbursement to scam victims, but only in certain circumstances. In Mrs M's case, it concluded she had a private civil dispute with L and civil disputes weren't covered by the CRM Code. So, it didn't consider it was liable to reimburse her loss.

Unhappy, with Santander's response to her fraud claim, and with the service she had received throughout, Mrs M brought her complaint to this service. One of our Investigators looked into it but didn't think the complaint should be upheld. In summary, it was our Investigator's view that, based on what he'd seen, it was more likely than not a civil dispute between the two parties. So, he didn't think Santander had acted unfairly in reaching the outcome it had. And with regard to the service Mrs M received, the Investigator was mindful that it wasn't clear to Santander whether Mrs M had been scammed or not, given the circumstances of what was happening. And it could only provide any information it could, based on what it was being told. And they considered it was therefore a difficult situation for both Mrs M and Santander. The Investigator also considered that at the point Mrs M wanted to raise a scam case against L – Santander did explain the process involved raising a scam claim which involved reporting it to L's bank. And the Investigator wasn't satisfied that L not refunding Mrs M was as a result of the scam claim raised by Santander.

Mrs M responded disagreeing with our Investigator's view and requested an ombudsman's review.

So, as an agreement hasn't been reached, it 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here which is whether Santander acted unfairly in its answering of the complaint that the matter is a civil dispute, and it is therefore not liable to reimburse her under the provisions of the CRM Code. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The starting position in law is that Mrs M will generally be considered liable for authorised payments. It's accepted that she authorised the payment in dispute and so she is liable for it in the first instance. At the time Mrs M made the disputed payment to L, as I've mentioned, Santander was signed up to the CRM Code which provided additional protection from APP scams, but only in certain circumstances.

When Santander considered Mrs M's claim, it said it didn't think she'd been the victim of an APP scam, meaning it didn't need to reimburse her under the principles of the CRM Code because it didn't apply to her circumstances. For me to say that decision was wrong – and Santander should've refunded Mrs M's payment in full – I'd 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 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.*"

And 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*"

There's been no suggestion made that Mrs M was deceived into transferring her funds to a different person. So, DS1(2)(a)(i) doesn't apply in these circumstances.

To uphold Mrs M's complaint under DS1(2)(a)(ii) of the CRM Code, I'd need to be reasonably satisfied that it is more likely than not that L received her payment for a fraudulent purpose. So, I've carefully considered whether the evidence suggests that L was most likely the "legitimate supplier" of a service and whether Mrs M's payment meets the CRM Code definition of an APP scam.

The purpose of a payment forms part of the CRM Code definition of an APP scam. As such, the reason Mrs M 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 Mrs M was dishonestly deceived about the very purpose of the payment she made.

In the circumstances of this case, having reviewed all the testimony, information and evidence provided by both parties and from evidence provided by the receiving bank (the beneficiary bank where L held his account), I can't fairly and reasonably conclude that it was more likely than not that L set out with intent to defraud Mrs M. I'm satisfied, on the balance of probabilities, that it is more likely than not that the intentions and purpose of the payments match here. Mrs M intended for work to be done, and L seemingly intended on fulfilling that purpose by carrying out the works – until things sadly went awry.

I appreciate that L has a history which Mrs M has pointed to. L it seems was arrested and pleaded guilty to money laundering in 2018 and was sentenced to prison for an investment scam in which he defrauded a number of victims. And it seems L then changed his surname and I suspect he did so in order to start his life over given his previous conviction. I have taken account of L's history here, but I have to be mindful that L had served his sentence. And it seems, based on the evidence available on this case, L turned towards landscape gardening and had been undertaking that profession for some years. I also appreciate Mrs M has contacted the police about L, and it appears that no charges have been brought so far.

Obviously, I cannot know for sure what was in the mind of L at the time Mrs M made the payments. So as a result, I must infer what L's intentions were, based on the available evidence that I have had access to.

Mrs M's own testimony in relation to L states:

"…I had been to the home of a couple that had had work done by him, the contact number/email were the same from 2022/2023, I had asked the suggested builders merchant if they knew him, said they had, he had done work for us before, twice and was used by our neighbours and they were happy, in fact they recommended them and now feel terrible. He does have a bad review on a website and this was not discovered until after I had made the payment, bearing in mind we had used him and done all the above, I was not sure what was going on and still am not sure."

To my mind, despite L's history, L had clearly been operating for some years as a landscaper. Mrs M had used L twice previously – going back to 2022, as had her neighbours. And Mrs M had also attended another property to view the work L had carried out prior to paying the £5,200 deposit. And he was known by the builders merchant that Mrs M contacted. So, I don't think this supports L being a fraudster or setting out with intent to defraud but rather suggests L was legitimately providing a landscaping service and had been doing so for a number of years and seemingly with no issues.

This is also supported by the receiving bank providing information to our service about L. I would add at this point that the receiving bank has provided information about L in confidence – to allow our service to discharge our investigatory functions and further assist with the determination of this complaint. Due to data protection laws, our service can't share any information about the beneficiary or the receiving bank account.

From reviewing the information, I note that the receiving bank has advised that it hasn't had any other formal complaints or fraudulent activity reports about L prior to Mrs M's report that it received from Santander. That doesn't, to my mind, support L being a fraudster intent on deceiving people. Whereas had L been a fraudster, then it is likely that there would be further reports of potentially fraudulent activity raised to L's banking provider. I appreciate Mrs M's comments that L's bank account has subsequently been closed, but any action by the receiving bank, after the event, is its own commercial decision. But the receiving bank confirmed that at the time it had no concerns in relation to the account and deemed the matter a civil dispute also.

When considering the above, it seems to me L was carrying out landscaping works as evidenced by the testimony in this case – but it clearly wasn't operating at the level you would expect and wasn't successfully operating or managing the financial matters of the company well. But poor financial management doesn't automatically mean that L intended to defraud Mrs M. The profession L was in, landscaping, can be heavily dependent on being physically available to work. And I think that is likely what happened here, with L not being able to work and this is what then subsequently led to the long list of excuses L provided around either trying to refund Mrs M her deposit or start the work.

Upon taking on Mrs M's job, L did order some materials – and I would add here that I don't find that to be a typical action a fraudster would take. It's more likely a fraudster would simply take the money and disappear. And the day before Mrs M's work is meant to start L says he had cut his wrist and done damage to a tendon. And L provided images to Mrs M and said he was told he needed to rest for three to four weeks. Despite Mrs M's reservations as to whether this was truthful or not – understandably so given the list of excuses L goes on to provide, I do think it is more likely than not that this is what happened in this case. And L not being able to work meant he didn't have an income and used the money that had been provided through Mrs M's deposit, in essence, as wages. And the reason there was a long list of excuses as to why L kept delaying Mrs M's refund and never adhered to another start date was because L never had the money to actually return or purchase the relevant materials to continue with the works.

There was some seriously poor behaviour / practice from L. I note on 1 July 2024, L said to Mrs M that he has contacted the suppliers and told them to hold off on the delivery date and that everything was order, but he just needed his wrist to heal. L and Mrs M then arranged for the work to commence in three to four weeks' time to allow for L's injury to heal. But from looking at the receiving bank statements, L actually requested a refund of the materials that had been ordered. And L does this on 4 July 2024 – so a couple of days after advising Mrs M something different. The refund was processed and is received into L's account on 19 July 2024. And it appeared L used that money for personal expenditure. And I suspect it was because of the lack of funds available to him due to the absence of him not being able to work. Then on 4 August 2024, L says *"…I really feel quite bad now, even though there is not alot I can do about it. But I can either get all monies back from the suppliers and get back that to you, or if you can wait until I'm fully fit myself and I will just keep everything on hold."* So, L is untruthful here and deliberately so, as he had already requested a refund of the materials a month earlier.

When experiencing that sort of behaviour, I can completely understand why Mrs M considers she was the victim of a scam. But as I've said, poor financial management doesn't mean that L had set out with intent to defraud Mrs M when he took the job on initially and when Mrs M made the payment.

I'm satisfied that L had been operating in the landscape profession for some time and had carried out works for customers, but it seems L was more akin to a one-man band and was not operationally or financially savvy enough to bring in another worker to complete works or have enough funds to cover works should he fall ill or pay himself when he couldn't work. That is extremely poor management, and I can certainly understand why Mrs M is so furious at L and with L's subsequent actions, communications and fabricated excuses that he provided about providing a refund or being able to start the work over the following months, when it is clear he wasn't able to. And it looks like L was biding time in the hope that he could find the funds and be physically able to carry out the work. Mrs M has been horribly let down by someone she thought she could trust.

So, I do agree Mrs M is owed money by L. But, and importantly, the test I have to apply in this case is whether Santander is liable to reimburse Mrs M for her losses. And in doing so I have to consider whether L set out with intent to defraud Mrs M from the outset. And I'm not satisfied that is the case here. I'm satisfied on the balance of probabilities that L was acting in a legitimate capacity at the time Mrs M made the payment and intended to do the work. I consider this is evidenced by the past work L had completed, not only for Mrs M, but others also. And I'm mindful L ordered materials for the job, which I don't consider he would have done if he never intended to carry out the work. And with the receiving bank also advising there had been no other reports of fraud, and it held no concerns at the time. It seems L was unable to carry out the work and with what appears to be a genuine reason initially. And due to poor financial management was unable to recover and get to a position whereby he could either refund Mrs M or do the work. And sadly, at that point, L reverted to lying and providing fabricated excuses. But the dishonest deception that came later on doesn't mean that L never intended to do the work at the time he received the payment for the works.

So, that means I don't think Santander acted unfairly in advising it considered the matter was a civil dispute and is therefore not covered by the provisions of the CRM Code – meaning it isn't liable to reimburse Mrs M her loss.

As Santander didn't need to consider this as an APP scam, then it didn't need to go on to seek the recovery of any funds from L. I'm also satisfied that there wasn't anything else Santander could have done to prevent the loss here either, given the value and nature of the payment and that Mrs M had used L previously and trusted L – which she relayed to Santander when it spoke to her at the time she made the payment.

With regard to Santander's complaint handling and the service Mrs M received, I agree with our Investigator. This was a complicated series of events, with Mrs M not sure whether she was being scammed or not – due to her past history of using L and with L offering to start the work after the injury and also offering to refund Mrs M. I don't think Santander were in a position whereby they could tell whether it was a scam or not nor point specifically as to what Mrs M should do in regard to the ongoing communications or arrangements with L. So, while it was certainly a frustrating time for Mrs M and she was doing all she could – I don't make an award for any additional compensation here. I also don't find that Santander, in setting up a scam claim, meant that this was the reason L then chose not to refund Mrs M – as L didn't have sufficient funds to reimburse Mrs M in any event.

I'm sympathetic to the position Mrs M finds herself in and I am sorry to have to deliver this news to her. I can see she considers she has been scammed by L and has been badly let down by L and is now out of pocket as a result. And I can certainly understand her strength of feelings as to why she feels this way, based on the actions of L. And it was certainly a terrible time for her and caused her immense distress and at a time where she had lots going on personally.

But, for the reasons I have explained, I cannot say that Santander should fairly and reasonably be held responsible for refunding her the money she paid. I consider Santander were fair in considering the matter not an APP scam but a civil dispute which isn't covered by the CRM Code and is therefore something that needs to be resolved between the two parties through alternative methods.

Mrs M has advised that she is pursuing L to try and recover the money she is rightfully owed through alternative means. If new material evidence comes to light as a result of any proceedings against L, then Mrs M should contact Santander and let it know so that it may reconsider her claim.

My final decision

For the reasons explained, 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 M to accept or reject my decision before 19 September 2025.

Matthew Horner
Ombudsman