

## The complaint

Mrs and Mr M complain that Santander UK Plc ('Santander') declined to refund them after they said they lost £7,310 as a result of a scam.

## What happened

The circumstances of this complaint are well known to both parties, so I will not go into every detail of what happened here. But, in summary, in May 2024 Mrs and Mr M made four payments over the month to a trader for house projects including removing the existing driveway and laying a new one. They found the trader, whom I will call 'A'. A quoted them around £8,500. They had seen work that A had completed on a neighbour's house which they thought was to a good standard. The payments were for a deposit, and then for specific materials.

The work on the property started late – with A telling Mrs and Mr M that the delays were caused by ill health and bad weather. A started the work and promised to return at a later date to finish the work – but he never returned. Mrs and Mr M asked A for their money back, and A said he would on numerous occasions but has failed to do so.

Mrs and Mr M complained to Santander, who reviewed their concerns but declined to uphold their complaint. It said that this amounted to a private civil dispute rather than a scam, so it had no obligation to refund their losses.

Unhappy with their response, Mrs and Mr M escalated their concerns to our service where one of our investigators looked into what had happened. They recommended that Mrs and Mr M's complaint should be upheld, on the basis that they did think that A had intended to defraud them from the outset and so they thought it was most likely that the evidence suggested they had fallen victim to a scam. Our investigator said that Santander should refund the first three payments under the Contingent Reimbursement Model ('CRM') code, but that by the fourth payment Mrs and Mr M should have recognised that A's behaviour should have raised some questions which prompted further checks to verify the legitimacy of their requests. So, they thought an exception to the presumption of reimbursement under the CRM code applied.

Mrs and Mr M did not agree, they thought the fourth payment should also be refunded on the basis that our investigator did not take into account its close proximity to earlier payments, and A had inferred that the work would start the following week which they were keen to have happen, and A provided an invoice for around £200 for machinery hire.

Santander also disagreed with our investigator's view on this case. They said that it did not agree that this was a scam rather than a private civil dispute. It also said that whilst their communication with Mrs and Mr M may not have gone far enough at the time of the payments, they did not think having a normal 'scam conversation' would have prevented the customer from making the payments.

As no agreement could be reached, the case has been passed to me to decide.

## 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 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.

It is important to note that I am not deciding a dispute between Mrs and Mr M and A. I do not have the power to consider any potential criminality or complaints about A. My role is limited to deciding the dispute between Santander and Mrs and Mr M. So, I need to decide whether Santander acted fairly when it concluded that this amounted to a civil dispute and not a scam, such that the CRM code did not apply in this case.

It isn't in dispute that Mrs and Mr M authorised the payments that left their account. The starting position – in line with the Payment Services Regulations 2017 – is that they are liable for the transactions. But they say that they have been the victim of an Authorised Push Payment (APP) scam and that A's intent from the start was to deceive them.

Santander was a signatory to the voluntary CRM Code which was in place at the time of these payments. This was a scheme through which victims of APP fraud could sometimes receive reimbursement from the banks involved. The CRM code is quite explicit that it does not 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.*

The CRM Code does not clearly define what a 'private civil dispute' amounts to, but a civil dispute can be ordinarily defined as a disagreement about, for example, quality of goods between private individuals or companies. The code broadly describes examples of what is considered an APP scam and this includes where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent. This can be considered a dishonest scheme, where the payee never intends the same purpose as the payer. In this case, that purpose would be the undertaking of works at Mrs and Mr M's address.

So, I can only apply the CRM Code to Mrs and Mr M's payments, or consider Santander's liability to them under the CRM Code, if I'm satisfied that the payments were made as part of an APP scam. As opposed to a situation where A didn't fulfil the contract with Mrs and Mr M due to, for example, the business failing, a breakdown in relationship between the two parties, ill health or dissatisfaction with the quality of the work which would be considered a 'civil dispute' not covered by the CRM Code.

I've carefully considered all the reasons that Mrs and Mr M believe they were the victims of an APP scam, along with evidence provided by Santander and the bank which held A's receiving account. Having done so, I agree with our investigator that it is more likely than not that A did not intend to carry out the works from the start. I say this because:

- I have reviewed information about A's bank account, and whilst I cannot go into detail due to data protection reasons, the account does not appear to be run in a way that

is consistent with someone carrying out the sort of work they contracted A for. It is significant that whilst the receiving bank initially said that they deemed this a private civil dispute, they have since confirmed that there were numerous other reports of fraud made against A. And the movement of money coming in and out of the account is not consistent with a business taking on work they intend to complete.

- I appreciate that A did start some works on the property, namely the removal of the existing driveway. The works were only meant to take about one week and were subject to numerous delays from the beginning. Mrs and Mr M reported that some of the delays seemed illogical – such as delays due to poor weather in the summer when they say they were not experiencing poor weather. So, I think it is likely that A was deliberately delaying attending Mrs and Mr M's property to undertake the works. When he did attend, the work A completed would not have been at any great expense to him – other than the time it took. Mrs and Mr M paid for specific goods, and there is no evidence that A bought these goods, nor completed the services.
- The police force have been investigating A's conduct, though A has not cooperated with their investigation. The matter is still under consideration as of the last update our service received. Whilst this does not conclusively determine that this was a scam, it is something of interest to me in my consideration of this case.
- I have considered the fact that A had completed work previously, and did buy some goods related to the services he was said to undertake. I think it is likely that A had operated as a legitimate trader and successfully undertaken projects, but had ended up for one reason or another taking on work which he knew, or would have strongly suspected, that he could not complete. Whilst there is some evidence of him attempting to provide refunds to people, this in and of itself does not negate that he took funds from Mrs and Mr M without the intention of completing the work at their address. The fact that he did not appear to be operating the account in a way that appears to have included paying for the goods required for Mrs and Mr M's project, despite assurances he had been, demonstrates a level of dishonesty from A that I think existed at the time he made the agreements for Mrs and Mr M to pay A.

I cannot know exactly what went on in the man behind A's mind. But having considered everything against the balance of probabilities, I think it is more likely than not that A acted with an intent to defraud from the start here – in that he knew or should have reasonably known that he was not going to undertake the agreed works for Mrs and Mr M when he took their payment.

So, having decided that on the balance of probabilities, the payments Mrs and Mr M made to A were part of an APP scam, I will now consider what this means for what liability Santander and Mrs and Mr M would have for these losses.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Service Regulations and the terms and conditions of the customer's account. However, where the consumer 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 consumer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I have considered whether Santander should reimburse some or all of the money Mr and Mrs M lost in line with the provisions of the CRM Code it has agreed to adhere. I've also considered whether it ought to have done more to protect Mr and Mrs M from the possibility of financial harm from fraud.

*The CRM Code*

Santander is a signatory of the Lending Standards Board Contingent Reimbursement Model ('CRM') Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. It sets out standards that banks, such as Santander, are expected to meet in terms of protecting their customers from financial harm. But it also sets out expectations that a customer should meet, too. As a starting point, a customer should receive a full refund if they fall victim to an authorised push payment scam such as this one.

I have already outlined above that I think it is more likely than not that Mr and Mrs M were the victims of an APP scam. But, Mrs and Mr M would not be entitled to a full refund if Santander can fairly and reasonably demonstrate that Mrs and Mr M has failed to meet the requisite level of care under one of more of the listed exceptions set out in the CRM Code.

Those exceptions are:

- The customer ignored an effective warning in relation to the payment being made;
- 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 CRM Code, but they do not apply in this case.*

**Did Mr and Mrs M ignore an effective warning?**

The code sets out standards that banks are expected to meet. Santander needed to be on the lookout for factors that might indicate an enhanced risk that Mrs and Mr M's payment instructions were being made as part of a scam. Where they identify such a risk, the bank needs to take reasonable steps to provide the customer with an effective warning.

The CRM code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

When Mrs and Mr M were making the first payment, it flagged on Santander's systems such that Mrs and Mr M were asked to select a payment purpose. Santander say they selected 'paying for a service'. Santander have shown the 'dynamic' warning that they would have then been shown, which asked some more questions about the circumstances of the payment and provided advice on common elements of scams to look out for, and steps that they could take to protect themselves. I have carefully considered the warnings that were displayed, and do not think they go far enough to be considered 'effective' under the CRM code. I say this because there were some parts of the warnings which were not specific to the scam that Mrs and Mr M were falling victim to, such as information about intercept scams. When they indicated they were paying for building work, there was some messaging about building scams, but they did not match up with the type of scam Mrs and Mr M were falling victim to. They spoke of door step builder scams, and it is understandable that this would not resonate with Mrs and Mr M at the time as the key features of the types of scams outlined in the warning did not match up with the situation they were in. They also had a conversation with Mrs and Mr M – but again I do not think that this was specific enough to have been considered an effective warning. So, all things considered I would not find it to be fair and reasonable for this exception to reimbursement to be applied in this case.

**Did Mr and Mrs M have a reasonable basis for belief?**

I have also considered whether Mrs and Mr M acted reasonably when making the payments, or whether any warning signs ought to have reasonably made them aware that A was not genuine.

Mrs and Mr M agreed with A that they would pay a deposit, and then pay the rest of the cost on completion. The total quote was approximately £8,500 and they paid the deposit of £4,650. The four payments were made over a period of 25 days, despite the fact that A had told them the rest would be payable on completion. I must consider Mrs and Mr M's basis for belief for each payment, which I will do in turn.

When Mrs and Mr M made the first payment, I think they did so with a reasonable basis for belief. They knew of works that A had completed and had a recommendation. They received A to their property to assess the works prior to the quote being provided, and he discussed a variety of options with Mrs and Mr M. When Mrs and Mr M got the quote, it was not the only quote they went out for. They said A's quote was about £2,000 cheaper than another company they received a quote from, but this was not so low that it ought to have seemed too good to be true. Mrs and Mr M explained that they thought a small local tradesman could perhaps keep their costs down, so it understandably gave them no cause for concern.

I do think that when A approached them for more funds for the second and third payment, this may have been unexpected as they did not agree to pay anything else until the works were completed. But A had explained specifically what the funds were for, and sometimes unexpected costs come up in the duration of a project like this. The amounts asked for, and paid, were relatively low at only £630 and £240. So, set against the backdrop of the reasons I believe they had a reasonable basis for belief for the first payment, I can understand that these would not have given them cause for concern. So, I do not think they acted without a reasonable basis for belief for the second or third payment to the scammer.

By the fourth payment, I do think Santander are entitled to rely on this exception to reimbursement in full under the CRM code. This is because the amount asked for was significantly larger - £1,790. It was the third payment that had been asked for after the deposit, despite the works not being completed. A did say what the funds were for, but I think the third request for further payment before works were completed, for such a large amount that it meant they had paid nearly the total sum for the project, ought to have been concerning. I appreciate that Mrs and Mr M were keen to get the project started, but I do think there ought to have been sufficient cause for concern here to have asked further questions, done more checks or declined to make this payment altogether.

### **Putting things right**

To put things right, I require Santander to:

- Refund the first three payments in full;
- Refund 50% of the fourth payment; and
- Pay 8% simple interest on these payments from the date they declined to reimburse Mrs and Mr M under the CRM code, to the date of payment.

### **My final decision**

I uphold this complaint and require Santander UK Plc to reimburse Mrs M and Mr M in line with what I have said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to

accept or reject my decision before 1 December 2025.

Katherine Jones  
**Ombudsman**