

## **The complaint**

Mr B and Miss P complain that Santander UK Plc won't refund the money they lost when they were the victims of what they feel was a scam.

## **What happened**

In late 2021, Mr B and Miss P wanted to get some building work done at their property. They agreed for a builder to do the work and then made a number of payments over the following months from their Santander account to the builder to pay for different parts of the work.

The work was started but, unfortunately, some of the agreed work was not completed and some of the supplies and materials the builder agreed to buy were never bought. After giving them some time to either complete the work or refund their money, Mr B and Miss P say the builder ultimately accepted they couldn't complete the work. Mr B and Miss P then reported some of the payments they had made to Santander as a scam and asked it to refund the money they had lost.

Santander investigated but said Mr B and Miss P had made a number of other payments to the builder they weren't disputing, so appeared to be happy with some of the work they had done. It said this appeared to be a dispute between them and the builder, so didn't agree to refund the payments Mr B and Miss P had disputed. Mr B and Miss P weren't satisfied with Santander's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They said the builder had done some of the agreed work and had refunded some of the money Mr B and Miss P had disputed, which they wouldn't expect of a scammer. They didn't think there was enough evidence to show the builder intended to scam Mr B and Miss P when the payments were made, so they didn't think Santander should have to refund the payments they had disputed. Mr B and Miss P 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.

Having done so, I don't think it would be fair to require Santander to refund the payments Mr B and Miss P made. I'll explain why below.

In broad terms, the starting position in 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.

The CRM code says that 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 decide whether Santander should refund the money Mr B and Miss P lost under the CRM code, I need to consider whether they have been the victims of a scam – or, in other words, whether the builder set out from the beginning with the intent to defraud them.

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.

Mr B and Miss P have said they were recommended the builder by the architect they had used for the building work. But I wouldn't expect a scammer to be able to arrange this kind of personal introduction or recommendation.

Mr B and Miss P made a number of other payments to the builder they've not disputed before, during and after the months when the disputed payments were made. And they've accepted that the builder has completed some of the agreed work at the property. And based on the amounts of the payments they're not disputing and the period of time these non-disputed payments were made over, it appears the builder carried out more than an insignificant amount of work at their property – and more work than I would expect from someone who never intended to complete the work.

The builder also continued communicating with Mr B and Miss P for a significant period of time after their last payment to them, and has refunded them a total of more than £7,000 over a period of around six months. And I wouldn't have expected someone who's intention was to scam them to continue communicating with them or return so much of their money.

The bank the payments were sent to has said the account the payments went in to is still open, and they don't appear to have received any other scam reports about the account. But scammers usually target a number of people at once, in order to make as much money as possible before the scam is uncovered. So I'd expect to see other scam reports to the same account around the same time if the builder was operating a scam.

Mr B and Miss P have said the builder led them to believe he would be purchasing a number of items for the building work but never did, and has now admitted he used the money they paid him towards other projects he was working on. But I don't think using funds in this way is uncommon in the building trade and I don't think it necessarily means the builder never intended to buy the items or complete their work, as they may have intended to then use money from other clients to buy their items.

I appreciate how Mr B and Miss P feel about this case, and that they have had to re-purchase a number of items the builder never purchased for them. But I must make a decision on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely the builder here was attempting to operate as a legitimate business at the time and that other factors ultimately meant the work wasn't completed. I don't think the builder set out from the beginning with the intent to defraud Mr B and Miss P, or that they have been the victims of a scam here.

Mr B and Miss P have mentioned that they know of other people who have lost money or not received what they paid for from this builder, and they think this suggests the builder was operating a scam. But I've not seen details of these other disputes with the builder so I can't

comment on them directly. And, from the evidence I've seen of Mr B and Miss P's circumstances and as I explained above, I think it's more likely the builder was attempting to operate as a legitimate business at the time their payments were made. So I still don't think they have been the victims of a scam, as defined in the CRM code.

And so I don't think the payments Mr B and Miss P made to the builder are covered under the CRM code, or that Santander should be required to refund the money they lost.

I sympathise with the position Mr B and Miss P has found themselves in, and I'm in no way saying they did anything wrong or that they don't have a legitimate grievance against the builder. But I can only look at Santander's responsibilities and, for the reasons I've explained above, I don't think it would be fair to hold Santander responsible for the money they lost.

### **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 B and Miss P to accept or reject my decision before 9 February 2024.

Alan Millward  
**Ombudsman**