

## The complaint

Mrs D complains that Santander UK Plc ('Santander') won't reimburse the money she lost when she fell victim to a scam.

## What happened

Mrs D says that she wanted a double storey wrap around side extension and looked on an online marketplace that connects customers to tradesmen. She got some quotes and in November 2021 someone I'll refer to as P, from a company I'll call M, provided a quote of £123,456. Mrs D felt this was more than she wanted to pay and didn't go ahead. In April the following year P contacted Mrs D with a revised quote of £86,300 and agreed a quick start. P said the initial quote was for a high end finish and the lower quote was for a low to medium finish with various discounts he could obtain. P also said he had been in the business for fifteen years and had a large team of project managers, bricklayers, carpenters, and electricians to support him.

P presented himself as a qualified builder and carpenter and there were positive reviews on M's website. P was working at an address near to Mrs D, so she went to look at the work and talk to the owners of the property who were satisfied with P. Mrs D says she now knows that the person she spoke to, and thought was the owner, wasn't and that the real owners of the property have also raised a scam claim. She decided to go ahead with the work, signed a contract and paid a deposit of £8,500 to buy materials. Work was due to be completed in mid-September 2022.

At a relatively early stage, P asked Mrs D if she would talk to another potential customer of P's, and she agreed to do so. Mrs D says this was P's strategy – to seek reviews from clients at an early stage when limited work was done to draw in more customers. Ultimately though, work wasn't completed and what was done had to be redone.

Mrs D made the following transactions to M:

Date	Amount
30/05/22	£8,500
01/07/22	£16,400
11/08/22	£15,000
25/10/22	£7,500
<b>Total</b>	<b>£47,400</b>

P and his team started work at the property which involved the removal of the bathroom and kitchen fittings, and some carpets as well as some excavation work which was approved by building control.

Mrs D has explained that the final payment of £7,500 was to secure an electrician and plumber to complete the work at the property as they were in demand and Mrs D wanted the project to be completed as it was taking significantly longer than the time agreed.

Mrs D says that P lied to her throughout the project and completed minimal substandard work to persuade her to pay more funds. The relationship broke down in November 2022 after P had repeatedly told Mrs D and her husband that workmen were on site when this wasn't the case, and the project wasn't moving forward. She says that when she asked for funds to be returned P's demeanour changed and he became intimidating and threatening.

Mrs D raised a scam claim with Santander on 27 November 2022. Santander said Mrs D had a civil dispute with the builder and suggested that she tried to resolve matters with him directly.

Mrs D was unhappy with Santander's response and brought a complaint to this service. She would like Santander to refund her loss and has referred to the huge financial impact of the loss, as well as the fact that as a result of what has happened she suffers from chronic insomnia. Mrs D says the police are clear this is not a civil dispute, and she has provided evidence of other victims who have been left in the same position as her.

#### *Our investigation so far*

The investigator who considered this complaint recommended that it be upheld. He said that the police have been investigating and want to arrest P, but he has left the UK. The police are aware of ten other victims and Mrs D believes there are more. There are similarities between the cases with P starting work, usually clearance, followed by a delay that he would blame on others. Some substandard work would be completed and not finished once funds were received. This work would be completed by young and unskilled workers. The investigator went on to say that it appears P wasn't a qualified builder as he said he was and that he obtained a qualification as a master builder in dubious circumstances. Overall, the investigator felt P didn't have the intention or skill to complete the agreed work.

Mrs D was happy with the investigator's findings, but Santander was not. I've summarised its main points below:

- M was incorporated in April 2020 and was registered with Companies House at the time the payments were made.
- P was registered with the Federation of Master Builders.
- The evidence relating to Mrs D's circumstances at the time, including the timing of payments and the work done are not consistent with Mrs D being the victim of a scam. Work was completed apparently in line with what was agreed in the contract and some of this work was approved by Building Control, and payments were made over a five month period. So, it was clear that funds were used to buy materials.
- Mrs D was sent numerous photos of the work that had been done and visited the site.
- It now appears the work was substandard, but Santander isn't liable for poor workmanship.
- Mrs D chose to make transfers rather than to pay by card – which would have given her chargeback rights.
- If Santander had intervened when any of the payments were made nothing would have suggested this was a scam and there wouldn't have been any concerns about the legitimacy of M, so no warning would have made a difference.
- Analysis of the messages exchanged between Mrs D and P show no evidence of social engineering, intent or pressure. Initially it was clear Mrs D was happy with the work and P. Ultimately Mrs D accused P of breach of contract because of the delay in completing the work and she asked P to return £7,500. Santander questioned why Mrs D didn't ask P to return all the payments.

- In the messages P says Mrs D was abusive, that he had receipts for everything, was happy to go to court and had gone to the police. The messages also show that Mrs D told P not to return to her property.
- It's important to assess each case on its own merits. The evidence that has been provided by the police shows the police have suspicions around P's activities, particularly in the period shortly before he left the country, but it doesn't determine the position.
- Santander raised the Supreme Court decision of *Philipp v Barclays Bank plc*. In that case it was decided that where a bank receives a payment instruction from a customer which is clear and leaves no room for interpretation, if the customer's account is in credit, a bank's primary duty is to execute the payment instruction. The duty is strict, and the bank must carry out the instruction promptly and without concerning itself with the "*wisdom or risks of the customer's payment decisions*". Santander doesn't believe it breached any duty owed to Mrs D.

The complaint was passed to me to decide. As I intended to reach a different outcome to the investigator, I issued a provisional decision on 26 March 2024. In the 'What I've provisionally decided – and why' section of my provisional decision I said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I'm sorry to hear about the situation Mrs D has been left in. She has paid out a considerable sum of money, yet it seems the work wasn't completed and what has been carried out is substandard. I don't have the power to decide any dispute between Mrs D and P. My role is limited to looking at whether Santander has treated Mrs D fairly.*

*As a starting point in law, Mrs D is responsible for payments she has instructed Santander to make. Unfortunately, there is little protection available to her for bank transfer payments like these.*

*When thinking about what is fair and reasonable in this case, I've considered whether the CRM Code applies and, if so, whether Santander should have reimbursed Mrs D under the provisions of it, and whether it ought to have done more to protect her from the possibility of financial harm from fraud.*

*Having thought very carefully about Santander's actions, I'm not intending to uphold Mrs D's complaint. I appreciate how disappointing this will be for her, but I don't think I can fairly say Santander should reimburse her. I'll explain why.*

*The CRM Code provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I have set this definition out below:*

*...a transfer of funds executed across Faster Payments...where:*

- (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.*

*This definition is the only one that is relevant when deciding if Santander should reimburse Mrs D.*

*The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:*

*"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.*"

*In other words, the CRM Code isn't a general protection for customers against non-receipt of or defective goods or services. It only applies if it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met. So, I need to consider not simply whether P made any misleading claims but whether Mrs D was induced to make payments with the intent to defraud her from the outset. That would mean the evidence supports a finding that it's more likely than not (rather than just as likely) that P obtained payments for a purpose that was different to the one Mrs D thought she was making the payments for because of dishonest deception. It also means being able to exclude, on the balance of probabilities, the alternative possibility that this is simply a matter of P breaching a legitimate contract with Mrs D.*

*It's important to note that it isn't for Santander to investigate P/M or to prove that P wasn't acting fraudulently. It is for Mrs D to provide evidence to prove these allegations.*

*Mrs D has photographs which show that the extension wasn't finished but a fair amount of work was completed at Mrs D's property and that some of this was approved by Building Control. Mrs D was very happy with this work in the early stages. I appreciate it has now come to light that the work was substandard and much of it has had to be redone. But the CRM Code is clear that defective workmanship amounts to a civil dispute that isn't covered by it.*

*The police have provided evidence to Santander and to this service which says Mrs D is the victim of a scam and should raise a claim with her bank. It says that viewed individually this is a civil dispute but that because P has done the same thing at other properties and left work unfinished in the same way the police think P acted fraudulently. This evidence is useful but not conclusive. Much of the police's evidence is circumstantial and I note that they didn't have the opportunity to speak to P before he fled the country to understand his position. As a result, there is no criminal prosecution, and it seems unlikely there will be. This is at least in part because of the difficulties involved in extraditing P.*

*The investigator contacted the firm holding the account that received Mrs D's payments. While I cannot detail the information that the recipient firm has provided in response, that information is consistent with P operating as a builder. At the time Mrs D made the payments, the receiving bank also had no concerns about the operation of the account. And I note that M was a company that was registered at Companies House.*

*Mrs D has shared the messages she exchanged with P. It's clear that Mrs D was unhappy that the project was taking longer to complete than was anticipated. She raised breach of contract with P and the relationship between her and P broke down after this. P told Mrs D that he had receipts for everything and was happy to go to court. It isn't now possible to establish whether P was telling the truth.*

*After considering the evidence, I can't safely conclude that P took Mrs D's money without ever having any intention of carrying out the work or purchasing the items she had paid for. The evidence available to me simply isn't enough to support such a finding.*

*I appreciate how frustrating and disappointing this answer will be. Mrs D has lost a lot of money as a result of P's failure to complete the agreed work. But I can't exclude the possibility that P entered the agreement in good faith, intending to fulfil the work and then was unable or unwilling to fulfil the agreement for some reason. Businesses can fail or be mismanaged such that agreements are breached and agreed services aren't provided. Or relationships break down as work progresses. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that P intended to steal Mrs D's money from the outset and never had any intention of fulfilling the agreement.*

*In saying all of this, I don't underestimate the impact this whole matter has had on Mrs D who has lost out through no fault of her own. It does seem her trust in P was misplaced and he has badly let her down.*

*I'm unable to comment on why other banks might have refunded customers in similar circumstances and, I'm afraid, it doesn't have any impact on my decision. I can only consider whether Santander treated Mrs D fairly in the individual circumstances of this case.*

*I've seen no other reason why Santander ought to have prevented these payments or needs to refund Mrs D. There's no dispute here that she authorised the payments. Because of this, Santander had an obligation to follow Mrs D's instructions. But it was possible for Santander to stop the payments if it had reasonably been put on notice that the funds were being misappropriated. In this case I consider that if Santander had intervened and asked about the payments Mrs D would have said that she was paying a builder who approached her after she used a known site, had provided detailed documentation, and was registered. I'm not persuaded Santander would have had any concerns that Mrs D's funds were at risk, and I consider Mrs D would have gone ahead.*

*Overall, I can't fairly hold Santander responsible for Mrs D's loss.*

Santander didn't respond to my provisional decision. Mrs D didn't accept my findings. She provided contact details for the police and for Trading Standards and further information from the police including a chronology of events and evidence from its investigation file.

### **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 sorry to disappoint Mrs D but the evidence she has provided does not alter my decision. For the reasons I set out in my provisional decision (which is reproduced above), I'm not satisfied Mrs D is the victim of an APP scam as set out in the CRM Code so I can't fairly ask Santander to reimburse her.

It's clear that the police were investigating P and looking into fraud claims. But the police had not completed the investigation before they discovered P had moved abroad and was unlikely to return. Given this point, the police decided not to continue with its investigation.

It is for Mrs D to provide the evidence she would like me to rely on, and evidence from the police says that Trading Standards carried out its own enquiries but had not been able to progress the investigation to any charges. So I'm not persuaded further evidence from Trading Standards would be helpful.

As I said in my provisional decision, I understand how disappointed Mrs D will be with this decision, but I can't fairly ask Santander to reimburse her.

### **My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 5 June 2024.

Jay Hadfield  
**Ombudsman**