

The complaint

Mr T and Mr T complain that Santander UK Ltd says it won't refund them money they transferred to a builder who has failed to complete the agreed work.

What happened

Mr T and Mr T hold a joint account with Santander. In early 2022, they were looking to renovate a property they'd purchased. The renovations were to be significant, and included a loft conversion, staircase, and a replacement kitchen and bathroom.

They found a contractor which provided a schedule of works for the project. Given the size of the project, it appears they engaged an architect to help with the plans.

Mr T and Mr T paid the contractor in stages, with an initial payment in February 2022 for site set-up and scaffolding. The contractor was a limited company. I'll refer to it (and interchangeably to its director) as S.

Work began, and S attended along with other some other workmen. The property was cleared and scaffolding erected. As the work progressed, Mr T and Mr T made further payments in March, May, August and ultimately September.

S then asked Mr T and Mr T for a further payment, which he said was for additional scaffolding costs. Mr T and Mr T didn't agree to this. They then say S stopped contacting them, leaving the work incomplete. S also failed to supply the items that had been agreed. Mr T and Mr T were unable to obtain a refund from S.

They were suspicious that S might never have intended to supply the items or complete the work. They therefore contacted Trading Standards, the Police, Action Fraud and Citizen's Advice. However, none of these bodies took any action against S.

Being left considerably out of pocket, Mr T and Mr T reported the matter to their bank, Santander. They claimed it had been an Authorised Push Payment scam (APP scam).

Santander looked into what had happened but didn't think it was liable to refund Mr T and Mr T. It didn't think it had been established that Mr T and Mr T had been the victim of an APP scam. Rather it thought this was a private civil dispute between them and S. Because the payments had been made by bank transfer, the protections that would apply against breach of contract or misrepresentation if Mr T and Mr T had paid by card weren't available. That meant Santander couldn't help, and the bank didn't consider it was liable to refund them.

Mr T and Mr T didn't accept this. They referred their complaint about Santander to this service for an impartial review.

Our Investigator looked at everything afresh. During her investigation, she obtained evidence from various parties, including S's bank, in an attempt to confirm Mr T and Mr T's concerns that this had been an APP scam. However, she didn't think the evidence pointed towards S

having had no intention to carry out the work as agreed.

Based on the evidence presented and her investigation, she didn't think Santander was responsible for the money Mr T and Mr T had paid S. She explained that Mr T and Mr T could pursue the matter through the small claims court, mirroring the advice they'd been given by Citizen's Advice.

Mr T and Mr T didn't accept the Investigator's findings. They thought S had no intention to complete the work or supply everything they'd paid for. They thought the Police and Trading Standards should have taken action against S and should now do so. S had carried out some work but there had been extended and unjustifiable gaps in the progress of the work. When S had left the site, the work was far from complete, and the property hadn't been left in a habitable state.

In light of this disagreement, I have been asked to reach a final decision on their complaint.

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 hear about the situation Mr T and Mr T have been left in. They have paid out a considerable sum of money, yet the work is nowhere near completion. While they have asked S to refund them, it appears the relationship has broken down to the extent that he is no longer in contact.

Given this it doesn't seem at all likely that S will return to finish the work or provide the ordered items. Mr T and Mr T have tried to pursue S through the Police, Action Fraud, and Trading Standards, but none of these bodies appear to have thought there was a viable case to prosecute or investigate S further.

Based on everything I've seen, it seems hard to argue other than that S has breached his contract with Mr T and Mr T and so owes them redress. But I'm not deciding a dispute between them and S – I don't have the power to look into a complaint about S. Nor can I look whether the Police or Trading Standards should have taken action against S. My role is limited to deciding the dispute between Mr T and Mr T and Santander.

Of course, Santander didn't contract with Mr T and Mr T for the building project they wanted done, and I can't hold it responsible for any breach of contract or other failings on S's part. As a starting point in law, Mr T and Mr T are responsible for payments they've instructed Santander to make. Unfortunately, there's little protection available to them for bank transfer payments, like these were.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams. But it specifically excludes private civil disputes.

There are a number of potential reasons (other than an APP scam) for a breakdown in a relationship between two parties and for such a dispute to exist. And unfortunately, businesses (such as S's business) can fail or be mismanaged such that contracts are breached and agreed goods and services aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

Specifically, the CRM Code details that private civil disputes can include payments made to a legitimate supplier where the goods ordered, or services agreed, were not received. The

CRM Code will not apply to payments that meet that definition.

Instead for a payment to be covered by the CRM Code, it must meet the definition of an APP Scam under the CRM Code. In this context, that would require that the very purpose for which S procured the payment was different to what Mr T and Mr T believed due to dishonest deception.

Simply put, in order to find Santander was somehow liable to Mr T and Mr T under the CRM Code, I'd need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Mr T and Mr T, and S. That also means being able to exclude on the balance of probabilities the alternative possibility that this is simply a matter of S breaching its legitimate contract with Mr T and Mr T.

Or to put this another way, that means deciding whether the available evidence shows it is most likely that S set out to defraud Mr T and Mr T with criminal intent. That is a high bar to meet.

It's important to note that it isn't for Santander to investigate S, or somehow prove that S wasn't operating legitimately. It was for Mr T and Mr T to provide evidence to support those allegations. While Mr T and Mr T have provided evidence showing that the work was not completed and items weren't delivered, this could be consistent with S broken a legitimate contract as much as with S never having intended to complete the work from before the payments were made.

In an attempt to shed some light on the matter, our Investigator contacted the firm holding the account that received Mr T and Mr T's payments. While I cannot detail the information that the recipient firm has provided in response, that information is not consistent with S having set out to defraud Mr T and Mr T. Rather it suggests that the account's use was consistent with someone carrying out this sort of work.

It's also significant that up until now there have been no other allegations of fraud made to the bank or negative online reviews. If S had not been operating legitimately and had scammed other people, then I would've expected some customers would have contacted their own bank and alleged fraud, in the way Mr T and Mr T did. I think the fact that this doesn't appear to have happened, and that the reviews are instead mostly positive, support the argument Santander makes for this really being a private civil dispute.

All considered I simply can't safely conclude that S took Mr T and Mr T's money without ever having any intention of carrying out the work or purchasing the items they'd 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. Mr T and Mr T have lost a lot of money as a result of S's failure to complete the agreed work. But I can't exclude the possibility that S entered the agreement in good faith, intending to fulfil the work (as reviews suggest he had apparently done for other customers previously) and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that S intended to steal their money from the outset and never had any intent of fulfilling the arrangement in full or in part.

That means that I can't fairly hold Santander responsible for the loss suffered here by Mr T and Mr T. It also means I find the bank had no ability or obligation to try and recover their money.

In saying all of this, I don't underestimate the impact this whole matter has had on Mr T and

Mr T – I am sorry they have lost out through no fault of their own. It does seem their trust in S was misplaced and he has badly let them down. But that fault lies with S, not with the bank. And it's simply the case that I can't fairly tell Santander to pay them the money they've lost, because I don't think Santander has treated them unfairly or was otherwise at fault here.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mr T to accept or reject my decision before 8 January 2024.

Stephen Dickie
Ombudsman