

## **Complaint**

Miss J is unhappy that Santander UK Plc won't refund money she says she lost to a scam.

## **Background**

Miss J wanted some building work to be carried out at her home. She found a building contractor online. The builder (Mr K) visited her home and showed her examples of work he'd done for other clients. She agreed a price and was happy to go ahead. The work was supposed to start in August 2022. However, the builder said that he'd been delayed by the need to complete a previous job. I understand the builder reduced the quoted price for the job to reflect the late start.

Some workmen arrived at Miss J's home and began to carry out groundworks without the supervision of Mr K. He asked Miss J to pay these workers in cash and that would be deducted from the eventual bill. According to Miss J, the men carrying out these works had never met Mr K and had simply responded to an advert requesting labourers. She says they claimed to have been told to tell clients that they'd worked with Mr K for years.

Shortly after this point, Mr K asked Miss J to transfer money. He said he needed to order materials for the work. Miss J made the first of six payments on 7 September 2022. She went on to transfer £23,840 at various points throughout that month.

Although Mr K had said that he needed the funds to buy materials relevant to the job, practically none showed up. She says that Mr K visited her home on 10 September so that she could make a decision on the type of roof tiles she wanted to buy. She transferred further funds to him two days later to enable him to buy those roof tiles, but none were delivered. According to Miss J, the only thing that was delivered was a set of fence posts.

Once the groundworks had been completed, Miss J says that the workmen didn't know what to do next without the direction of Mr K. However, Mr K was more or less uncontactable. He told Miss J that he'd returned to his home country because a family member was unwell. He then had to make another trip in early November because that family member had passed away.

On 21 November, Miss J contacted Santander to tell it she thought that Mr K had defrauded her. Unhappy with that allegation, Mr K wrote to Miss J and explained that he was terminating his contract with her and offered her a partial refund. There followed some negotiation about whether Mr K would return to the site and continue with the works, but Miss J accepted Mr K's offer to bring the contract to an end. He emailed her in January 2023 and claimed that he'd posted a cheque for that refund from his home country. The cheque never arrived.

Miss J complained to Santander that she was the victim of a scam. Santander said that it didn't agree. It thought that she had a civil dispute with Mr K, but there wasn't enough evidence to say that it was fraud. Miss J was unhappy with that response and so she referred a complaint to this service.

It was looked at by an Investigator who didn't uphold it. She was of the same view – i.e. that Miss J might have a legal claim against Mr K, but that she wasn't the victim of fraud. As far as Miss J knows, Mr K has since returned to his home country and there would be major practical obstacles to her pursuing a claim against him for damages.

Because Miss J disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

## Findings

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

The broad legal position is that Miss J is liable for payments from her account that she's authorised. However, Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. In certain circumstances, that code says it should reimburse its customer where they fall victim to a scam. It only covers certain types of payments. The Code defines a scam as being *"a transfer of funds ... where the customer intended to transfer funds to another person for what they believed were legitimate purposes but were in fact fraudulent."*

It explicitly excludes private civil disputes from its ambit by stating that it does not 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."*

It isn't in dispute that she authorised the payments that left her account. But she alleges that she has been the victim of an Authorised Push Payment (APP) scam and that the builder's intent from the start was to defraud her.

The key question I need to consider, therefore, is what the evidence shows the intentions of the builder were at the time. I obviously cannot answer that question with certainty and so I have to draw inferences from what the available evidence tells me was his likely intention at the time he agreed to take on the work and whether it is more likely than not that he intended to defraud Miss J.

I've considered the available evidence carefully and I'm not persuaded that it allows me to make that finding. It doesn't automatically follow that, just because the builder failed to perform his contractual obligations to Miss J, that he intended to defraud her from the start. Mr K's company may have been unable to deliver on the promises it made Miss J or perhaps was incompetently run. These things would be the basis of a civil claim but aren't enough to demonstrate fraud.

It's significant that the receiving bank – i.e. the bank that operated the builder's account – had no concerns and told our investigator that no other allegations of fraud have been made. It seems improbable (although I accept it's not impossible) that the builder defrauded Miss J alone or that no other victim thought they'd contact their bank to lodge a complaint.

Mr K's bank also shared evidence with us that showed how the account was operated. The funds Miss J paid to him appear to have been generally used up in daily expenses. In most of the cases we see, fraudsters will move stolen funds on to another account as quickly as possible so as to prevent the possibility of those funds being recovered by their victim. The way Miss J's money was used by Mr K's company was at odds with the typical approach of fraudsters.

Miss J has said that the builder's home was on the market at the time he agreed to take on the work and that a sale completed in November 2022. She's pointed to this as evidence that he intended to leave for his home country with her money. It's understandable that she would have suspicions about the actions of the builder, but this is quite a speculative argument. House sales aren't necessarily concluded quickly or predictably, and the builder could have made alternative living arrangements even after selling his home.

Miss J has also drawn my attention to the fact that the workmen who turned up at her home said that Mr K owed them money and also highlighted the unusual arrangement under which she had to pay cash to some of the workers herself. However, I think unpaid wages and asking clients to make short-term cash payments really points to a company that was being chaotically mismanaged, rather than being a clear indication of fraudulent intent.

I can certainly see that Miss J has been let down very badly by a builder that she trusted. Her financial losses are very significant and it's understandable that she would feel aggrieved. But while I know that my decision will be hugely disappointing to her, I'm not persuaded that the evidence supports the argument that Mr K set out to defraud her. As a result, Santander isn't required to consider her complaint under the terms of the CRM Code.

### **Final decision**

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 17 November 2023.

James Kimmitt  
**Ombudsman**