

## The complaint

Mr and Mrs K complain that Santander hasn't refunded money they lost when they paid a company to carry out home improvement work, which they now believe was an Authorised Push Payment scam (APP Scam).

## What happened

Mr and Mrs K hold a current account with Santander. In 2021, they were looking to have a new bathroom fitted. They found a local company that looked suitable, which I will refer to as C.

C had good reviews online. Mr and Mrs K saw previous work, which looked to be of a good standard. They decided to go ahead and contacted C to obtain a quote. In total the work was quoted at a price of just over £5,400. A deposit was needed for the sum of £1,800 to cover the costs of purchasing materials.

Mr and Mrs K paid an initial sum of £1,800 for the deposit money, on 28 July 2021.

In September, Mr and Mrs K discussed the specification and details of the tiles and fittings with C's director. They asked C to also purchase tiles for the project, paying a further £935 on 21 September 2021.

The work was then scheduled to start at the end of October. But just before C was due on site, the director contacted Mr and Mrs K to say that due to Covid infections in C's team, the start date would need to be postponed.

Mr and Mrs K tried to reschedule with C but this proved difficult. So on 30 November, they told C they'd decided against going ahead with the work. It was agreed they would receive a refund of what they'd paid. However, C didn't refund straightaway, saying that the items needed to be returned and they were under financial pressure due to several other jobs due at the same time having been delayed or cancelled for the same reason.

Eventually, C began to refund Mr and Mrs K's money due in instalments. Repayments of £500 were received by Mr and Mrs K on 20 February 2022, 7 March 2022, and 16 March 2022.

However, at this point C said its financial situation was becoming much worse and that the company was being targeted through unfairly negative online reviews - compounding the problem. Despite remaining in contact with Mr and Mrs K, no further refunds were made back to them, and C entered liquidation later that year.

Remaining significantly out of pocket, Mr and Mrs K reported what had happened to their bank. They said that while they hadn't reported C to the Police, they were aware other people had. Mr and Mrs K thought this had been an APP scam and that Santander should refund them.

Santander is a signatory of the Lending Standard Board's Contingent Reimbursement Model

Code (the CRM Code) which can provide greater protection from APP scams. But Santander said it didn't think the CRM Code could apply to Mr and Mrs K's payments. It noted that while C had been reported to the Police, the Police had confirmed this to be a civil matter (not criminal). Santander explained that the CRM Code didn't apply to private civil disputes. So it wasn't liable to refund Mr and Mrs K, their dispute was with C.

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

Our Investigator looked at everything afresh. During his investigation, he considered evidence from various parties, including C's banks, in an attempt to confirm Mr and Mrs K's concerns that this had been an APP scam, and so something that would be covered by the CRM Code.

However, having looked into everything the Investigator didn't think the evidence pointed towards C having had no intention to carry out what had been agreed at the time Mr and Mrs K had made their payments. The Investigator explained that the wider protection available for payments made by bank card didn't apply to bank transfers. He didn't think Santander was responsible for the money Mr and Mrs K had paid C.

Mr and Mrs K didn't agree. They said other people had raised similar issues with their banks, and some had been refunded, including some who'd referred their complaints to this service.

The Investigator sympathised with Mr and Mrs K's frustration but explained that he didn't think the evidence showed that they had been scammed by C and that was what he needed to consider. He said the refund payments they'd received, and the continued contact weren't what might be expected if C had actually been carrying out a criminal scam (and so had been attempting to steal Mr and Mrs K's money).

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 very sorry to hear about what has happened here, and the impact this has had on Mr and Mrs K. They paid in good faith for work to be done, and the refund that was agreed was only ever paid in part. Other customers of C have tried to pursue the company through the Police and Trading Standards, but none of these bodies appear to have thought there was a viable case to prosecute or investigate C (or its director) further. Mr and Mrs K have been left out of pocket by over £1,200.

While they are still owed that money, C has now entered liquidation and it seems unlikely that as unsecured creditors of C there will be any money from the liquidation to return to Mr and Mrs K.

Of course, I'm not deciding a dispute between Mr and Mrs K and C – I don't have the power to look into a complaint about C or about its director. My role is limited to deciding the dispute between Mr and Mrs K and Santander. Of course, Santander didn't contract with Mr and Mrs K for the home improvement works they wanted done, and I can't hold it responsible for any breach of contract or other failings on C's part.

Rather, as a starting point in law, Mr and Mrs K 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 company to have failed to provide a full refund when it said it would. That might be what would happen where a business has run into serious financial problems or is failing for some reason.

Unfortunately, businesses can fail or be mismanaged such that contracts are breached and agreed goods and services aren't provided or agreed refunds aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam at the time when the original payments were made (which is what is needed to show that the CRM Code should apply).

The CRM Code excludes private civil disputes - which it says can include payments made to a legitimate supplier where the goods ordered, or services agreed, were never received. So not getting what was paid for (or here the full refund promised) isn't enough to show that the CRM Code should apply.

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 C procured the payment was different to what Mr and Mrs K believed due to dishonest deception. That applies even though C only partly refunded them later - what matters in terms of the bank's liability under the CRM Code is what C intended at the time of the payments.

Simply put, that essentially means that in order to find Santander was somehow liable to Mr and Mrs K under the CRM Code, I'd need to find the evidence is strong enough to show this had been a deliberate criminal scam from the outset - rather than it being a private civil dispute between Mr and Mrs K, and C.

It also means I need to be able to exclude on the balance of probabilities the alternative possibility that this is simply a matter of C breaching its legitimate contract with Mr and Mrs K or failing to fulfil its promises for any legitimate reason. Put another way, I need to decide whether the available evidence shows it is most likely that C and its director set out to defraud Mr and Mrs K with criminal intent. That is a high bar to meet.

It's important to note that it isn't for Santander to investigate C, or somehow prove that C wasn't operating legitimately. And while Mr and Mrs K have provided evidence to show that the refund later promised wasn't fully repaid to them, I think this could be consistent with C broken a legitimate contract for reasons such as financial difficulties - as much as with C never having intended to complete the work at the time the two initial payments were made.

While other people have been left in the same position as Mr and Mrs K, and those others also lost money, again that doesn't prove this wasn't a business that ran into financial difficulties and failed (rather than being a criminal venture designed to defraud people of their money). I am aware that other customers have been refunded by their banks but that doesn't mean I can require Santander to do the same unless I find there is enough evidence to show on balance that it needs to do so under the CRM Code.

In an attempt to shed some light on the matter, our Investigator considered information from the banks holding accounts for C and C's director, as well as information from the Police and Trading Standards. While I cannot detail the confidential information that was provided, I have reviewed everything that is available. And having done so, I can't conclude other than to find that this information isn't consistent with C (or C's director) having set out to defraud Mr and Mrs K. Neither does it support a finding that the payments Mr and Mrs K were obtained as part of a criminal APP Scam.

So while I know Mr and Mrs K feel very strongly that they have been the victims of a scam the evidence available to me doesn't support that as the most likely explanation for what happened. And I can only reach a final decision based on the information and evidence available to me.

I appreciate how frustrating and disappointing this answer will be. Mr and Mrs K have lost a lot of money as a result of C's failure to refund them in full.

However, I simply can't exclude the possibility that C entered the agreement in good faith, intending to fulfil the work (as reviews suggest C had done for other customers previously) and then was unable to fulfil the agreement for whatever reason. That could include either due to the ill-health claimed or because of taking on too much work, but it could be for any number of other reasons – but this doesn't show it was most likely a criminal act.

And in short, I don't think the evidence shows it's more likely than these alternative possibilities that C intended to steal Mr and Mrs K's money from the outset. That means that I can't fairly hold Santander responsible for the remaining loss that has been suffered here by Mr and Mrs K. 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 and Mrs K – I am sorry they have lost out through no fault of their own. The evidence suggests C failed and that this may have been for reasons such as mismanagement, over-booking or could have encountered financial difficulties that perhaps should have been avoided. But any fault there lies with C, not with Santander. 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 Mrs K and Mr K to accept or reject my decision before 10 April 2024.

Stephen Dickie  
**Ombudsman**