

The complaint

Mr J complains that Santander UK Plc (“Santander”) won’t refund £1,250 he says he lost to a scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything in detail again here. However, in summary, Mr J says he fell victim to a rogue trader scam in January 2022.

Mr J was looking for someone to complete some work on his bathroom when a tradesman, who Mr J had an existing relationship with, recommended someone who he believed to be a plumber and who he had worked with before. For the purposes of this decision, I will refer to this person as “D”.

Mr J contacted D, who sent him an invoice for the work to be completed via email. It was agreed Mr J would pay £1,250 upfront as a deposit for materials. Mr J then transferred this amount to D’s account. However, D did not turn up to complete the work and Mr J didn’t hear from D again.

Mr J says he then pursued D through the civil courts and a judgment was issued against him. However, when Mr J tried to enforce this judgment, it wasn’t possible to locate D and Mr J now believes D provided him with a false name and address. Because of this, Mr J says he’s been unable to enforce his court judgment.

So, having been directed to do so by the courts, Mr J contacted his bank, Santander. He asked Santander to contact D’s bank to freeze his account and get his money back. Santander did contact D’s bank but it went on to say that it wouldn’t look to offer Mr J a refund of the amount he had lost as it felt his circumstances amounted to a private civil dispute between him and D, rather than a scam that the bank should become involved in now.

Unhappy with Santander’s response, Mr J brought his complaint to this service. One of our Investigators looked into things but she didn’t uphold the complaint. Our investigator said that in order for us to investigate the complaint, Mr J must first provide further evidence that a scam had taken place.

Mr J disagreed with the Investigators opinion, he said Santander’s website had given the impression that Santander could only help with a fraud/scam if the payment had been made by credit or debit card. And this was the reason he had initially pursued the matter via the civil courts – not because he recognised the case as a civil matter. Mr J said had Santander not given him this impression, he would’ve contacted his bank straightaway and would’ve likely been able to get his money back.

Mr J went on to say that, at the very least, Santander should've acted once it had been told D was operating using a fake name and address. Mr J felt that at this point, Santander should have contacted D's bank and had his account frozen, but Santander had failed to act.

Mr J also questioned how he could be expected to prove that he had little to no contact with D after the payment in question was made as it was not possible to prove a negative.

Finally, Mr J said it had come to light via the court process that D provided him with a fake name and address. Mr J says this is clear evidence that D intended to deceive him from the outset as there would have been no reason to provide such details had D intended to provide the services they had agreed.

As an agreement could not be reached, the complaint was passed to me for a final decision.

As part of my review of Mr J's complaint, I reached out to Mr J to explain what information I would need to see to satisfy myself that a scam had taken place. Mr J said no further information could be provided.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this and this simply reflects the informal nature of our service as a free alternative to the courts.

Having reviewed all the evidence provided to me, I agree with the outcome reached by our investigator, for largely the same reasons. I haven't seen sufficient evidence of Mr J having been scammed and so I won't be upholding this complaint. I'll explain why in more detail below:

Mr J says when he initially reached out to D, he was sent an invoice via email to his personal email address. Mr J has provided me with a copy of this email and the attached invoice. However, Mr J hasn't been able to send me any further evidence to support that he has been the victim of a scam. I have no evidence to suggest the work wasn't completed, that D became uncontactable after the payment was made or that Mr J tried to contact him. Mr J has also been unable to produce any evidence or paperwork to support that he pursued D through the civil courts.

I appreciate what Mr J has said about it being very difficult to prove a negative and I understand where he is coming from. However, where a tradesman fails to turn up to carry out agreed work, I would expect to see evidence of the customer trying to contact the tradesman to ask where they are or ask for a refund. Furthermore, where a case is pursued

through the civil courts, I would expect to see some documentary evidence of this. However, despite several requests, Mr J has been unable to provide such evidence, nor has he been able to demonstrate through contemporaneous evidence that D failed to carry out the work agreed.

So, taking into account all of the circumstances, there simply isn't enough for me to fairly and reasonably say Santander should refund Mr J the amount he says he lost now.

I appreciate that Mr J has been able to provide a copy of the invoice sent to his email address from D. But this does not sufficiently demonstrate that he has been scammed. The invoice simply shows the work and costs that were agreed. It doesn't tell me anything about what happened next or corroborate that Mr J was ultimately the victim of a scam.

I've also thought carefully about what Mr J has told us about D using a fake name and address. As he says, there would've been no reason for D to have used a fake name and address had he intended to carry out the work Mr J paid him for. However, Mr J hasn't been able to produce any evidence that supports D was using a fake name and address and no evidence of the outcome of Mr J's court case has been provided either.

Furthermore, the information provided by Santander indicates that the Confirmation of Payee check that was carried out at the time the payment was made confirmed that the name of the payee matched the name of the account holder. And whilst I am unable to share details about a third-party and the nature of their relationship with their bank, the beneficiary bank also hasn't provided me with anything that persuades me D was using a fake name either. As such, I've seen no evidence that persuades me D was using a fake name and address at the time the payment in question here was made.

Finally, I've thought about what Mr J has told us about being mis-led by Santander's website. I've taken on board that he feels he could've recovered his money had he been provided with the correct information. However, I don't agree. Had Mr J contacted Santander sooner than he ultimately did, I still think Santander would've reached the conclusion that Mr J's circumstances amount to a private civil dispute between him and D. Because of this, Santander wouldn't have had any basis on which to have contacted D's bank to request Mr J's money back. So, overall, I don't think the information Mr J says he saw at the time has had a material impact on the overall outcome of this complaint.

Summary

Based on the very limited evidence available to me on this case, I don't consider there's enough evidence to demonstrate that Mr J has lost money to a scam. I therefore do not consider it would be fair and reasonable to hold Santander liable for the money he says he lost in these circumstances.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 22 March 2024.

Emly Hanley Hayes
Ombudsman