

## **The complaint**

Mr and Mrs C complain that Santander UK Plc won't refund the money they transferred to a landscape firm, who has failed to complete the agreed work.

## **What happened**

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, both parties accept that Mr and Mrs C engaged a landscaping firm (who I'll refer to as F) to provide a patio and garden pathway in their garden. Mr and Mrs C were quoted £9,500 for the work.

During the completion of the works, Mr and Mrs C have explained they identified issues with the workmanship, which they relayed to F. Once the work was completed, Mr and Mrs C have said F wanted immediate payment and so they sent the funds across by bank transfer. At this point they were unable to stand on the patio as it was still drying. However the following day, Mr and Mrs C identified and raised several other issues by email with F. Some remedial work was completed a few days later, but there still a number of issues with the patio that Mr and Mrs C continued to raise.

It seems from this point onwards there was relatively little communication from F, and so Mr and Mrs C took the case to a small claims court to determine. As F did not reply to the claim, it was ordered to pay Mr and Mrs C for the debt. However, Mr and Mrs C have explained that they've received no money from F and the individual that they'd been in correspondence with is no longer a director of the firm.

Mr and Mrs C have asked independent landscapers to review the work completed by F and provide a quote to put things right. The reviews suggest that F did not do the preparatory work they stated would be completed in their initial invoice, which has resulted in the quality of the patio being substandard. Mr and Mrs C have therefore sadly been left in a position where the patio they've paid for needs remedial work of a similar value to what they've already paid.

Being left considerably out of pocket and believing they'd been the victim of a scam, Mr and Mrs C reported the matter to their bank, Santander.

Santander looked into what had happened but didn't think it was liable to refund Mr and Mrs C. It didn't think it had been established that Mr and Mrs C had been the victim of an Authorised Push Payment (APP) scam. Rather it thought this was a private civil dispute between Mr and Mrs C and F.

Mr and Mrs C disagreed and so referred the complaint to our service. An investigator considered the complaint. Overall, he didn't consider the evidence pointed towards F having intended to defraud or scam Mr and Mrs C, but rather that this was a dispute over the quality of workmanship, which would be considered a civil matter. He therefore didn't consider Santander was liable to refund the losses Mr and Mrs C had incurred.

Mr and Mrs C disagreed with the investigator. They've referred to the Fraud Act 2006 which provides a description of fraud by false representation, which they consider encompasses F's actions.

As Mr and Mrs C disagreed with the investigator's findings, the complaint has been referred to me for a final decision.

## 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 of the position Mr and Mrs C have been left in. They have paid out a considerable amount of money and yet have clearly not been left in the position they were promised – and with a prospect of a significant sum of money still to pay out to get the garden they'd hoped for.

I can fully appreciate why, in this position, Mr and Mrs C would feel 'duped' – and from the evidence Mr and Mrs C have provided, it does appear that F breached its contract with them. But I'm not deciding a dispute between Mr and Mrs C and F. My role is limited to deciding the dispute between Mr and Mrs C and Santander.

Of course, Santander didn't contract with Mr and Mrs C for this home improvement they wanted done, and I can't hold it responsible for any breach of contract or other failings on F's part. As a starting point in law, Mr and Mrs C 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 F's business) can fail or be mismanaged such that contracts are breached and agreed 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 F procured the payment was different to what Mr and Mrs C believed due to dishonest deception. Mr and Mrs C argue that there were elements of deception, as work was quoted for which they consider F never had any intention of completing, but I can't say that the purpose for procuring payment was dishonest – in other words I can't conclude that F obtained funds from Mr and Mrs C with no *initial intention* of completing the works agreed. I don't dispute that it appears more likely than not that F didn't complete some (or even most) of the groundwork set out in its quote – but at the same time, F *did* do work. And the work it completed doesn't appear to tie in with the typical hallmarks of builder scams whereby the scope of the work and costs involved keep ever-increasing with no apparent work being provided. F did also continue liaising with Mr and Mrs C after the work was completed initially – and did return once after payment had been completed to attempt remedial work, neither of which are typical behaviours we would expect to see in scam scenarios where no further money is on offer.

Simply put, in order to find Santander was somehow liable to Mr and Mrs C 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 and Mrs C and F. That also means being able to exclude on the balance of probabilities the alternative possibility that this is simply a matter of F breaching its legitimate contract with Mr and Mrs C.

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

Having researched F online, I've not seen any negative reviews provided by other customers. If F had not been operating legitimately and had scammed other people, then I would've expected some customers to have raised this. So the fact that the reviews online appear positive, support the argument Santander makes for this really being a private civil dispute.

All considered I simply can't safely conclude that F took Mr and Mrs C's money without ever having any intention of carrying out the work they 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 and Mrs C have lost a lot of money as a result of F's failure to complete the agreed work. But I can't exclude the possibility that F entered the agreement in good faith, intending to fulfil the work (as reviews suggest it 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 F 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 and Mrs C. 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 upset this matter will have caused Mr and Mrs C – I am sorry they have lost out through no fault of their own. But that fault lies with F and not with the bank. And it's simply the case that I can't fairly tell Santander to pay them the money they lost, because I don't think Santander has treated them unfairly or was otherwise at fault here.

### **My final decision**

My final decision is I don't uphold Mr and Mrs C's complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 19 March 2024.

Kirsty Upton  
**Ombudsman**