

The complaint

Miss D complains that Santander UK Plc ('Santander') won't refund the remaining funds she lost in a scam.

What happened

Miss D says that her brother received a call on 7 July 2022 which he now knows followed a fake message from a delivery company. The caller told Miss D's brother that he was from the fraud department of a bank I'll refer to in this decision as bank A. Miss D's brother was told his account had been compromised when someone tried to take out a loan in his name. Bank A was conducting an investigation as there was a suspicion that a member of staff at bank A was involved. Miss D's brother made payments from his account, as instructed by the caller.

Miss D lives in the same house as her brother and was aware of some of the calls. Her brother told her that her accounts might be at risk because he had sent funds to her from his compromised account. Miss D also spoke to the caller, who didn't know any personal details about her, and asked who she had accounts with and for balance details. Miss D explained she had accounts with five banks, including bank A and Santander. The caller led Miss D to believe all her accounts were at risk and said she needed to transfer her funds to dummy accounts which had been created as part of bank A's investigation. The transfers would show whether staff were tampering with the payments.

Miss D made a £2,000 transfer to a personal account on 8 July 2022. She later contacted Santander to report the scam.

Santander is signed up to the Lending Standards Board Contingent Reimbursement Model Code (CRM Code) and considered Miss D's claim under it. It said that it didn't fully meet its standards as it didn't identify the transaction as higher risk or provide an effective warning. But Santander said that it was relying on an exception to reimbursement which meant Miss D should be refunded 50% of her loss.

Miss D was unhappy with Santander's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said that Santander could fairly rely on the reasonable basis for belief exception to reimbursement in the CRM Code and had done what it could to recover Miss D's funds.

Miss D was unhappy with the investigator's findings and asked for a final decision, so her complaint has been passed to me to consider.

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 this cruel scam and the impact it has had on Miss D.

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 be good industry practice at the time. Having done so I have reached the same outcome as that of our Investigator and for broadly similar reasons.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But Santander has signed up to the CRM Code and also have a longstanding obligation to be on the lookout for unusual and out of character transactions which might indicate their customer is at risk of financial harm from fraud.

The CRM Code requires firms to reimburse victims of APP scams like this one unless it can establish that it can rely on one of the listed exceptions set out in it. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

There are further exceptions outlined in the CRM Code that do not apply to this case.

Taking into account all of the circumstances of this case, including the characteristics of Miss D and the complexity of the scam, I think the concerns Santander has raised about the legitimacy of the transactions Miss D made are enough to support its position that it can rely on an exception to reimbursement. I don't think she had a reasonable basis for believing the person she transacted with was legitimate. In reaching this conclusion I've considered what steps Miss D took to reassure herself about the legitimacy of the transactions, and whether it was reasonable for her to proceed with the payments.

- Although Miss D has provided evidence to show that bank A's number was spoofed, she told Santander she only checked this after she'd made the scam transaction I'm considering in this case. The number also isn't that of the fraud team. Miss D said she didn't complete any other checks.
- The scammer spoke to Miss D after he had spoken to her brother and established that Miss D's brother transferred funds to her from his account. But Miss D has an account herself with bank A and didn't question why bank A wouldn't reach out to her directly.
- Miss D didn't question the fact the scammer didn't know any personal details about her even though he said he was from a bank she had an account with.
- It didn't make sense for Miss D to move funds from her Santander account to try to catch a fraudster at bank A, a totally unrelated bank. There's no evidence that Miss D questioned this or understood how the different banks were meant to be linked.
- Before she transferred funds from her Santander account Miss D had already made transfers from two other accounts she held. The scammer told Miss D to lie to one bank when it intervened. I consider Miss D ought reasonably to have had serious concerns about being asked to lie to her bank.
- Miss D transferred funds to a personal account and had already transferred funds from other accounts to different individuals. I think she ought reasonably to have had concerns about this.
- By the time Miss D made the payment from her Santander account she'd had the opportunity to reflect on what she'd been told as the scam started the day before.
- Miss D had been told the police would visit on 7 July 2022. This didn't happen but she went ahead with the payment from her Santander account the following day.

The CRM Code also sets out standards that firms are required to meet. Those requirements include the provision of what the CRM Code defines as an 'Effective Warning' when a firm identifies an APP scam risk in relation to a payment. In this case I don't consider Santander ought reasonably to have identified an APP scam risk. I say this because the transaction was low in value and so wouldn't have stood out to Santander. This means I don't consider Santander was required to provide an Effective Warning or, given my findings above that the reasonable basis for belief exception can fairly be applied, reimburse any of Miss D's lost funds. Santander has already refunded Miss D £1,000 which is more than I would have awarded.

I'd expect Santander to contact the bank that received Miss D's funds promptly to try to recover them. In this case I've seen evidence to confirm that Santander did so very soon after the claim was reported so I'm satisfied it acted reasonably.

Overall, although I am sorry to hear about Miss D's loss, I can't reasonably ask Santander to do anything more.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 7 March 2024.

Jay Hadfield
Ombudsman