

The complaint

Mr and Mrs C are unhappy that Santander UK Plc won't refund the money they lost as the result of a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

In or around August 2021 Mrs C met somebody online. She didn't meet them in person, but has said she exchanged regular messages and had phone conversations and video calls with them. But unknown to her at the time, Mrs C was speaking to a scammer.

Mrs C has said after a few weeks the person began to ask her for money. He told her he was stuck abroad. He added that he was in the building business and after an accident at work, where there were fatalities, his passport had been taken by authorities and that he wasn't allowed to leave the country. He said he was unable to access his bank accounts as they had been frozen.

Believing things to be genuine, Mrs C agreed to help the scammer. She asked Mr C, from whom she is separated, to make payments on her behalf from their joint account and has said he was aware of what the payments were for. Mr C went ahead and made the following payments, to two separate payees, from their Santander account;

23 August 2021	£3,000	(to payee one)
27 August 2021	£700	(to payee one)
15 October 2021	£700	(to payee two)

Mr C later, when the scammer continued to ask for money, became concerned and reported the matter to Santander. Santander is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code (the "CRM Code"). The CRM Code requires firms to reimburse customers who have been the victims of authorised push payment (APP) scams in all but a limited number of circumstances.

Santander looked into things and issued its final response in April 2023 not upholding the complaint. In summary, it said it had met the standards of the CRM Code. It said it found that Mr and Mrs C didn't complete sufficient verification checks to confirm the legitimacy of who they were paying and ignored relevant warnings.

Santander also considered the concerns Mr and Mrs C had raised about Mrs C's vulnerability, but said it didn't identify any concerns that would affect the outcome of the claim. Santander made attempts to recover the money Mr and Mrs C lost from the beneficiary accounts (the accounts to which the payments were made), but it wasn't able to recover any of the money.

Unhappy with Santander's response, through their representative, Mr and Mrs C brought their complaint to this service. One of our Investigator's looked into things, but didn't think

the complaint should be upheld. In summary, it was our Investigator's view that Mr and Mrs C didn't have a reasonable basis for believing that the person(s) they were paying was legitimate. She added that she couldn't fairly say Santander had failed to provide effective warnings.

Our Investigator considered what Mrs C had told us about her circumstances. But our Investigator was not persuaded that it would be unreasonable to have expected Mrs C to have protected herself against the particular scam she fell victim to.

Mr and Mrs C didn't agree with our Investigator's view. In summary they thought they had a strong basis of belief. They thought this because the scammer had built a bond through calls/video calls and had provided photos of his family, along with a copy of his passport. They added that where Mrs C had recently separated from Mr C, she was feeling particularly vulnerable and the scammer used this loneliness to gain trust. As well as this, Mrs C also spoke to, who she thought, was the scammers uncle, who reinforced that the scammer was in trouble and needed help.

As Mr and Mrs C didn't agree with our Investigator's view, the complaint has been passed 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 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. This simply reflects the informal nature of our service as a free alternative to the courts.

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; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. There's no dispute here that Mr and Mrs C authorised the payments. So the relevant regulations (and the terms of their account) make them responsible for payments they made in the first instance.

However, where a customer makes a payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

I can understand entirely why Mr and Mrs C feel so strongly that this money should be returned to them. It's important to clearly acknowledge that it is not in dispute here that Mrs C has been the victim of a cruel scam. I can also understand how losing this money has impacted her.

But I can only compel Santander to refund Mr and Mrs C if it is responsible for the loss incurred. Having carefully considered the circumstances of this complaint, I can see no basis

on which I can fairly say that Santander should be held liable for Mr and Mrs C's loss here. I will explain why.

The starting principle of the CRM Code, that I mentioned earlier, is that a firm should reimburse a customer who is the victim of an APP fraud except in a small number of circumstances. The exceptions to reimbursement relevant to this case are:

- The customer made the payment without 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.
- The customer ignored an effective warning in relation to the payment being made.

There are further exceptions within the CRM Code, but they do not apply in this case.

I am also mindful that when Mr C made these payments, Santander should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Did Santander meet its obligations under the CRM Code and did Mr and Mrs C ignore an effective warning?

I've considered that, when Mr C made these payments, Santander should fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things).

Santander has said it provided a warning to Mr C at the time the payment was made. But it added that, as a result of the payment purpose given by Mr C, this warning wasn't relevant to the scam that Mrs C was falling victim to.

But in any event, in the circumstances of this case and when considering the account activity in the months leading up to the scam, I'm not persuaded the payments Mr C made to the fraudsters were such that Santander ought to have been on notice that he might have been at risk of financial harm from fraud. So, I'm satisfied Santander needn't have identified a scam risk and in turn did not need to provide an effective warning or question the payments before processing them.

Notwithstanding that, I also think it's more likely than not, that given Mr C was acting on the instructions of his wife, he would likely have moved passed any warning and I'm not persuaded any proportionate warning at this point would have made a material difference in preventing Mr C from proceeding with the payments.

Did Mr and Mrs C have a reasonable basis of belief?

I have thought about this carefully and I agree with the Investigator, in that Santander is entitled to rely on the exception not to refund Mr and Mrs C because the payments were made without a reasonable basis for believing they were for genuine goods or services or that the person to whom the payments were being made were legitimate.

This is not a finding I make lightly, and I have considered that the scammer was able to

build some trust and rapport with Mrs C. However, there were several indications that she ought to have recognised that she wasn't dealing with a legitimate person. I say this because;

- Mrs C had never met the scammer in person and she'd only been speaking to them for a few weeks before they asked her for money. Mrs C has ultimately placed a lot of trust in a stranger who she had never met. I consider that Mrs C ought to have had greater concerns and that, in turn, ought to have led to a greater degree of scrutiny on her part. Sending money to someone you haven't met in person was always a risk. I'm also mindful here that Mr C was aware of the reasons for the payments, so I think there was also an opportunity for Mr C to question the legitimacy of the payments he was being asked to make on Mrs C's behalf.
- I'm mindful that Mrs C has said she was sent photos of the scammer and his family along with a copy of his passport. But there are discrepancies in the scammer's story that Mrs C could have picked up on. I say that as on the one hand the scammer has been able to send Mrs C a copy of his passport, but on the other hand he has said he's unable to leave the foreign country he is being detained in as his passport has been seized.
- Alongside this, I'd also question the legitimacy of the 'police report' that the scammer sent to Mrs C. I'm not persuaded this looks like a legitimate document and I think it's highly questionable that such a document would carry any validity in a situation where seemingly people have lost their lives in an accident.
- I'm mindful that the nature of these scams can make victims take actions, that in the cold light of day, they may not usually take. But from what I've seen here Mr and Mrs C have had time to reflect on what was being asked of them. I say that as from the messages I've seen Mrs C had with the scammer's 'uncle', it seems Mrs C had her own doubts, questioning whether the 'uncle' was who he said he was and requesting a photo of them. So she wasn't, in my view, under immediate pressure to proceed with the various payments.
- It is also the case here that Mrs C isn't sending the money directly to the person she was speaking to, rather to two separate payees.

It's arguable that any one of the above factors, in isolation, may not have been enough to alert Mr and Mrs C to the potential risk. But overall, when taken collectively, I think there was enough going on to have raised significant concerns about the transactions Mr and Mrs C were making from the start. And this ought reasonably to have led them to take a more cautious approach than they did. It follows that I don't find they had a reasonable basis for believing the people they were paying were legitimate. So, I think Santander has correctly identified that this exception to reimbursement under the CRM Code applies.

My intention is not to further Mr and Mrs C's distress where they have already been the victim of a cruel fraud. But merely to highlight that I do find Santander has been able to demonstrate that they could have done more to verify the validity of the person Mrs C was communicating with and the proposals they were making.

Vulnerability under the CRM code

There are provisions under the code which might lead to a refund, even when a customer doesn't have a reasonable basis for belief. The relevant part of the Code says:

A Customer is vulnerable to APP scams if it would not be reasonable to expect that

Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered. This should be assessed on a case-by case basis.

I'm sorry to hear of the difficult circumstances that Mrs C found herself in. I've no doubt that she has been through a very difficult time and I don't doubt that the scam has impacted her further. But I've considered whether there were vulnerabilities present at the time to such an extent that Mrs C was unable to take steps to identify the scam she fell victim to or to recognise steps she might take to test the legitimacy of what she was being told by the fraudster. To do so I must consider the details of the scam, Mrs C's actions throughout, and the wider circumstances of what was happening.

I don't doubt what Mrs C has told us. But there is also evidence within the circumstances that suggests she was capable of taking steps to protect herself from fraud and financial harm. That is to say there was more she might reasonably have done that would have led to the scam being uncovered.

The evidence indicates she was able to question the scammer (and the uncle) around the purpose of the payments and around their identity. Having thought very carefully about everything Mrs C has told us, I'm not persuaded that it would be unreasonable to expect her to have protected herself against the particular scam she fell victim to. And so, on balance, I don't find that Santander need refund Mr and Mrs C's loss under the vulnerability clause of the code.

Did Santander do enough to recover Mr and Mrs C's funds?

Finally, I've thought about whether Santander took reasonable steps to recover Mr and Mrs C's funds once it was made aware they had been the victim of a scam. From what I can see Santander contacted the beneficiary banks, but were unable to recover any of the money lost.

Sadly, this is not unusual as scammers usually remove funds soon after payments have been made. So I don't think Santander could have done anymore to recover the money Mr and Mrs C sadly lost.

I am sorry Mr and Mrs C have fallen victim to a cruel fraud here, but I don't find Santander has made an error in not offering a reimbursement of their loss.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 13 August 2024.

Stephen Wise
Ombudsman