

The complaint

Mrs K complains that Santander UK Plc won't reimburse her the money she transferred to a fraudster.

What happened

Mrs K has explained she was looking to purchase some animals for religious purposes. A family friend provided Mrs K with contact details for an individual purporting to have animals for sale. Mrs K understands the family friend also received the individual's contact details via word of mouth.

It is Mrs K's understanding that her family friend had met with the seller and so on this basis she proceeded to contact him herself and make an arrangement to purchase animals. Mrs K's own contact with the seller was solely through messaging and she never saw any of the animals in question that she was arranging to buy.

Mrs K was advised the animals would be ready in around four weeks and made two payments to the individual, the first for £2,850 and the second for £600. However, after making the payments, Mrs K says the individual ceased communication with her and the animals were never provided. Believing she'd been the victim of a scam, Mrs K contacted Santander to raise a claim.

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

Mrs K disagreed and so referred the complaint to our service. An investigator considered the complaint. Overall, she didn't think Santander had provided sufficient evidence to demonstrate that this was a civil matter, rather than a scam. However, she also thought that, in the circumstances, Mrs K ought to have completed further checks to verify that she was dealing with a genuine seller. The investigator therefore didn't consider that Santander needed to do anything to put things right for Mrs K.

Mrs K didn't agree with the investigator, so the case has been referred to me for a 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.

Having done so, while I'm sorry to disappoint Mrs K, I'm not upholding her complaint. I'll explain why.

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.

In broad terms, the starting position at law 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. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether Santander should have reimbursed Mrs K under the provisions of the Contingent Reimbursement Model (CRM) Code and whether it ought to have done more to protect Mrs K from the possibility of financial harm from fraud.

I've first considered Santander's point that this is a civil matter between Mrs K and the seller, rather than a scam. However I don't consider Santander has provided sufficient evidence that supports this statement. As Santander was the account provider for the receiving account also, it's advised both Mrs K and the seller have provided the same chain of messages and reason for payment as a reason to deem this a civil matter. However I don't think this alone negates from Mrs K's testimony that she never received these goods – and the only evidence I've seen supports Mrs K's testimony - that no further contact was received following her payments.

As I don't consider the evidence provided sufficiently supports the suggestion that this is a civil matter, I've gone onto consider whether Santander is liable to refund Mrs K under the CRM Code.

The CRM Code

Santander is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM) Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances and it is for Santander to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an “Effective Warning” by failing to take appropriate action in response to such an effective warning
- 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

**Further exceptions outlined in the CRM Code do not apply to this case.*

I think Santander has been able to establish that it may choose not to fully reimburse Mrs K under the terms of the CRM Code. I'm persuaded one of the listed exceptions to reimbursement under the provisions of the CRM Code applies.

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I don't think Mrs K had a reasonable basis for believing she was paying for genuine goods. I'll explain why.

I appreciate Mrs K had received the fraudster's details through family recommendations and this would have provided reassurance to Mrs K that this was a genuine purchase. However, it's my understanding that no one Mrs K knew had actually received animals purchased at the point Mrs K made her payment. Therefore, despite these recommendations, I think it would still have been reasonable for Mrs K to have conducted her own research into the seller, by for example, meeting the seller first, or requesting evidence of the availability and condition of the animals.

Mrs K has explained the price she paid for the animals was cheaper than she would usually expect (by around 15-20%) but she believed this was due to buying from an individual, rather than a business. While I think this reasoning for a lower price is logical, I think that as Mrs K was aware that she was buying from an individual, rather than from a business, it would be more prudent still to ensure the individual has the items being offered and, in the case of animals, ask some further questions, such as, for example, how and from where the animals were obtained, or their current location.

With the above in mind, in the particular circumstances of this case, I consider that Mrs K ought to have conducted further checks, prior to making a payment to the fraudster. In not carrying out sufficient checks I don't find she had a reasonable basis for believing she was purchasing genuine goods and so fell below the level of care expected of her under the CRM Code.

Should Santander have done more to try to prevent the scam and protect Mrs K?

I've thought about whether Santander did enough to protect Mrs K from financial harm.

The CRM Code says that where firms identify APP scam risks in a payment journey, they should provide Effective Warnings to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

I am also mindful that when Mrs K 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).

Having considered the payments Mrs K made, I don't think they were so remarkable, in comparison to her usual account activity, that it should've appeared as suspicious to Santander. I therefore don't think Santander failed to meet its standards under the Code by not providing Mrs K with an effective warning, prior to processing the payment.

Additionally, by the time Mrs K raised her scam claim with Santander, her funds had already been utilised from the beneficiary account. I therefore don't think Santander could reasonably have done anything to recover Mrs K's funds.

Overall, while I'm sorry to disappoint Mrs K, I don't think Santander should be held liable for Mrs K's losses under the CRM Code. And so I don't intend to make an award to Mrs K.

My final decision

My final decision is that I don't uphold Mrs K's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 8 April 2024.

Kirsty Upton
Ombudsman