

The complaint

Mrs F complains that Santander UK Plc ("Santander") won't refund over £155,000 she lost to a romance scam beginning in May 2020.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. In brief summary, Mrs F fell victim to a romance scam after she struck up a relationship with a scammer ("M") through an online dating website.

Mrs F and M spoke regularly and she started to confide in him. M said he had moved to Iran for work as he was a private intelligence officer for the British Government. He then began asking Mrs F to send money for various things, such as paying his agent so money can be sent to his ex-wife to pay for his daughter's school trip.

Over the space of five months, Mrs F made the following payments from her Santander account for various different reasons given by M, including loans for an investment, money for flights home as well as bailing him out of prison after he said he'd been arrested:

Date	Payee	Amount	Method of payment used
13/05/2020	Crowd2biz	25,000.00	Faster payment
13/05/2020	Crowd2biz	25,000.00	Faster payment
18/05/2020	Crowd2biz	20,000.00	Faster payment
18/05/2020	Crowd2biz	20,000.00	Faster payment
19/05/2020	Crowd2biz	10,000.00	Faster payment
07/06/2020	Coinmama	2,625.00	Card Payment
11/10/2020	Bizznic	22,980.00	Faster payment
12/10/2020	Margaret Asare	3,000.00	International payment
12/10/2020	Margaret Asare	25.00	<i>Transaction fees</i>
14/10/2020	Margaret Asare	8,200.00	International payment

14/10/2020	Margaret Asare	25.00	<i>Transaction fees</i>
14/10/2020	Bizznic	19,000.00	Faster payment

Mrs F eventually realised she had been scammed after she carried out a reverse image search of the scammer's photo, which showed it was someone else. She reported the scam to Santander and asked it to consider reimbursing the money she lost. However, the bank refused to do so. It reviewed Mrs F's claim for the faster payments she made under the Contingent Reimbursement Model (CRM Code) but found her to be fully liable for the loss. Unhappy with this, Mrs F referred the matter to our service.

Our investigator didn't uphold Mrs F's complaint. He didn't think Mrs F had a reasonable basis for believing the payments were genuine as she had already been warned by the police and her other bank that she was being scammed. As a result, he didn't think an Effective Warning would've had a material effect on preventing the scam either, and also didn't consider Mrs F to be vulnerable. Mrs F disagreed, so the matter has been escalated to me to determine.

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, I agree with the conclusions reached by the investigator and have decided not to uphold it. I'll explain why.

It isn't in dispute that Mrs F has fallen victim to a cruel scam here. It also isn't disputed that she authorised the payments she made to the scammer. The payments were requested using her legitimate security credentials provided by Santander, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, starting with the faster payments, I've considered whether Santander would be liable to refund any of the money Mrs F lost in line with its obligations under the CRM Code, of which Santander is a signatory. This applies to authorised push payments made to another UK domiciled account denominated in GBP. So, the Code would only apply to the faster payments listed in the table above; it doesn't apply to the international transactions.

Under the provisions of the CRM Code, both the bank and its customer have obligations. If it can be shown that the customer has met their requisite level of care, then they will receive full reimbursement. If the customer has not done this, then it is for the firm to show that it has met its obligations under the Code, one of which is the provision of an Effective Warning when the firm identifies an APP scam risk in a payment journey. If a firm has not met its obligations then it, subject to any liability by the bank which received the money, will be liable for 50% of the customer's loss.

In this case, Santander has argued that exceptions to reimbursement under the Code apply such that none of the faster payments Mrs F made would qualify for reimbursement. It says Mrs F ignored an Effective Warning and that she lacked a reasonable basis for believing the payments or payee to be genuine, and therefore did not meet her requisite level of care.

Did Mrs F have a reasonable basis for belief when making the payments?

Having reviewed this aspect, I'm satisfied there was enough going on from the outset that should have given Mrs F serious cause for concern that she was being scammed.

As part of the same scam (and prior to making payments from her Santander account), Mrs F was also making payments to the scammer from another account she held with a different bank. Her other bank asked her to come into branch on 12 May 2020 as it had concerns about the payments she was making. During this visit, the bank became concerned that Mrs F was falling victim to a scam, so it invoked the Banking Protocol and contacted the police. The police attended the branch and warned Mrs F that she was being scammed, and it was made clear that she would lose her money if she made any further payments. But while she didn't proceed to make the payment from her other bank account, she did then start making payments from her Santander account instead, despite being told by the police and her other bank that she was being scammed and would lose her money.

I note that Mrs F also said she was sceptical about M's dating profile when she first found it as it only had 2-3 photos and very limited information. However, despite having these concerns, she chose to trust the scammer anyway. Given she had been told by her other bank and the police that she was being scammed before she started making payments from her Santander account, I'm not persuaded she had a reasonable basis for believing that M was genuine, or that the payments she was making to him were for legitimate reasons.

The stories Mrs F was being told by the scammer also became increasingly farfetched. He told her, for example, that he had received gold bars from an Iranian government official and that he had been arrested by the British government, so he needed money to be bailed out of prison. He also told her at one point that he had been shot and needed to be hospitalised.

Mrs F no longer has a copy of any messages shared between her and the scammer, so it's not possible to determine how she was led to believe that any of these situations were plausible. But in any event, I'm not persuaded she had cause for believing any of it to be genuine when she had been previously told it was a scam. I'm therefore satisfied Santander has correctly demonstrated that this exception to reimbursement under the Code applies.

Did Santander meet the standards expected of a firm under the CRM Code?

Even though I don't think Mrs F had a reasonable basis for belief when making the payments, she would still be entitled to a refund of 50% of the money she lost if Santander didn't meet the standards it has agreed to adhere to under the CRM Code.

The CRM code says that, where a firm identifies APP scam risks, it should provide "Effective Warnings" to their customers. It sets out that an Effective Warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an Effective Warning should be understandable, clear, impactful, timely and specific.

It isn't in dispute that an APP scam risk was identified here, as Santander did issue warnings to Mrs F. But based on the evidence I've seen, I'm not persuaded that any of the warnings Santander gave could be considered an 'Effective Warning' under the Code. However, despite this, I'm not persuaded such a warning would have been effective in preventing the scam, even if Santander had provided one.

Section 'SF' (Standards for Firms) under the CRM Code states:

"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 APP scam that took place".

As I've set out above, Mrs F ignored warnings from both her other bank and the police when she was told she was being scammed and that she would lose her money. Therefore, I don't think any form of intervention or Effective Warning Santander could have provided would've had a material effect on preventing the scam, as it wouldn't have been as impactful as a warning given in person by the police.

So, while I don't think Santander met its expected standards under the Code, I don't consider it would be fair and reasonable to expect it to reimburse 50% of Mrs F's loss for failing to provide an Effective Warning. Therefore, I'm satisfied it has acted fairly by declining any reimbursement under the Code.

Mrs F's representatives have argued that she was vulnerable at the time as she was suffering from a bereavement and low mood, such that Santander should not be able to rely on any exceptions to reimbursement under the Code.

The CRM Code states that 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"*.

I've considered the provisions of the CRM Code in this regard and what it says about vulnerability. And having done so, while I appreciate Mrs F would have no doubt been going through a very difficult time, I'm not persuaded her circumstances can reasonably amount to her being deemed *vulnerable* under the Code, or that it would not have been reasonable to have expected her to protect herself. So, I'm satisfied Santander can fairly rely on the exceptions to reimbursement.

Payments not covered by the CRM Code

As part of the scam, Mrs F also made a card payment of £2,625 to a cryptocurrency account on 7 June 2020, as well as two international payments. There are certain circumstances outside of the CRM Code where a bank would still be expected to intervene and question its customer about payments if they are unusual or appear particularly out of character.

However, I'm not persuaded these payments were unusual enough to have warranted an intervention. So, I don't think there was any expectation on Santander to have intervened and questioned Mrs F about them. In any event, even if it had intervened, I'm not persuaded this would have stopped Mrs F from making the payments in any event given she had already ignored warnings from the police. It follows that Santander cannot fairly or reasonably be held liable for the payments not covered under the Code either.

Recovery

I've also considered whether Santander did enough to try and recover the money after the fraud was reported. I can see that Santander reached out to the receiving banks, though it's not clear whether any response was received. However, Mrs F did not report the fraud until May 2021, which was over a year after she started sending money to the scammer. So, given the time that had passed, it seems highly unlikely that any funds would have remained in the receiving accounts for Santander to have recovered.

In terms of the card payment, Mrs F also wouldn't have any reasonable prospect of succeeding in a chargeback claim either, seeing as it was used to purchase cryptocurrency, which she duly received. Therefore, I don't think there was anything more Santander could've done to recover the money Mrs F lost in these circumstances.

I appreciate this will likely come as a disappointment to Mrs F, and I'm sorry she has lost her money to such a cruel scam; I don't underestimate the impact this must have had on her. But for the reasons given above, I'm not persuaded Santander can fairly or reasonably be held liable for her loss 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 Mrs F to accept or reject my decision before 27 December 2023.

Jack Ferris
Ombudsman