

The complaint

Miss A complains that Santander UK Plc ('Santander') won't refund her in full after she was the victim of a romance scam.

What happened

Miss A was contacted by someone after joining a dating site in early August 2022. I'll refer to this person as E in my decision. E and Miss A began communicating daily about everyday things and a relationship started to develop. They shared photos and discussed a future together. Miss A and E were arranging to meet when E said he needed to go abroad to do a presentation to bid for a contract on a rig. He was successful and stayed on the rig to wait for materials to arrive to complete the work. While E was away, he and Miss A continued to communicate regularly and spoke to each other but there were a lot of problems with the connection and calls being cut off. E told Miss A he took a burner phone on the rig and couldn't send photos.

E said his internet connection wasn't great and there was evidence of this from his communications with Miss A. He asked her to transfer over £2.6m for the materials from his business account on his behalf and provided her with his log in details. Miss A was able to see that the balance of the account was £4,678,656. He then asked Miss A to transfer more funds to a logistics company for shipment of the materials, but the account was blocked. E looked into this and told Miss A that his bank wouldn't unblock the account until he had attended in person in the United States – which wasn't possible while he was working on the rig.

E stressed the importance of completing the contract, saying that if everything went well, he would be awarded future contracts. He asked Miss A to send various emails on his behalf to explain the position and then to ask if the logistics company would accept 80% of the amount due for the time being. E tried various means to raise funds to go to his agent to pay for the materials on his behalf. His mum provided funds and a friend, who E asked Miss A to communicate with, provided a loan. But he was still short of just over £3,000. Miss A made a faster payment to a UK account on his behalf to cover this.

E then claimed to have further issues related to customs fees which needed to be paid in a short timeframe and then fees to transport materials to the rig and unload them. Some of these fees were funded by others but Miss A also helped E. Miss A made the following payments as requested by E:

Date	Amount	Information
28/09/22	£3,135	UK faster payment
11/10/22	£1,800 + £25 fee	International payment
21/10/22	£1,480 + £25 fee	International payment
Total	£6,465	

E continued to ask for payments for more spurious reasons including a flight. Miss A researched the cost of the flight and found it to be much less than E had suggested. She realised she was the victim of a scam and contacted Santander on 18 November 2022.

Santander said that it should have provided an effective warning in respect of payment one and didn't. But as Miss A didn't have a reasonable basis for believing E was genuine, it would only refund 50% of this payment. Turning to the international payments, Santander noted these aren't covered by the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) and said it wasn't responsible for them. Santander tried to recover Miss A's lost funds but wasn't successful in doing so.

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

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. She noted that the CRM Code only applies to the first payment and said that none of the exceptions to reimbursement set out in the code applied, so Santander should refund the remaining 50% of this payment. The subsequent two payments were international payments which aren't covered by the CRM Code. These payments weren't so unusual that Santander ought to have intervened when they were made, so the investigator didn't recommend they be reimbursed.

Santander said Miss A didn't have a reasonable basis for believing E was the person he said he was or that she was paying for genuine goods and services when she made the first payment and that there were so many red flags she should have completed additional checks. In particular, Santander said:

- E stated he had an agent abroad so it's unclear why he asked Miss A to transfer the funds.
- E claimed to have no internet access but communicated with Miss A via methods that required such access.
- Miss A had doubts about the legitimacy of E as images she received didn't match his profile picture as well as suspicions about the legitimacy of what she was being asked to do but went ahead anyway.

Miss A also didn't agree with the investigator's findings. I have summarised her main points below:

- What the investigator said in respect of the first payment was correct and nothing changed when she made the subsequent payments, which should be taken into account when considering the international payments.
- The second and third transactions were unusual as she had never made an international payment before, and the payments weren't low value, so Santander should have intervened. Miss A said she wasn't provided with any prompts or warnings.
- Had Santander done more when the first payment was made and acted in line with the CRM Code the following transactions wouldn't have been made.
- Miss A questioned what protection is available for international payments.

The complaint has been passed to me to decide.

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.

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.

I am so sorry to hear all that has happened to Miss A – not just the scam itself but also the impact all of this is having on her. There is no dispute that Miss A has been a victim of a cruel scam and I am deeply sorry for that, but it doesn't automatically mean Santander should refund her under the CRM Code or under Santander's wider obligations.

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 Miss A authorised the payments.

I've considered whether Santander should have reimbursed Miss A under the provisions of the CRM Code and whether it ought to have done more to protect her from the possibility of financial harm from fraud.

The first transaction made by Miss A is covered by the CRM Code, which Santander has signed up to. The CRM Code requires firms to reimburse customers who have been the victims of authorised push payment scams like this in all but a limited number of circumstances. Santander says one or more of those exceptions applies in this case. It says that Miss A made the payment without a reasonable basis for belief that the payee was the person she was expecting to pay, the payment was for genuine goods or services and/or the person or business she was transacting with was legitimate.

The CRM Code sets standards for Santander to meet. As Santander has already refunded 50% of the transaction covered by the code, which is what I'd expect Santander to do if it didn't meet its standard in respect of providing an 'Effective Warning', I don't need to consider this point.

Having considered the evidence, I am satisfied that under the terms of the CRM Code, Santander should have refunded the money Miss A lost when she made the first payment. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case and will explain why.

Having read the messages E sent to Miss A it's clear that he quickly made her feel special and loved and that they had a future together. By the time Miss A made the first payment E had trusted her to log into his online banking and transfer funds on his behalf. Miss A questioned this, and E told her she was his partner and he trusted her. The fact that E was prepared to trust Miss A to this extent would have been very reassuring to her. Miss A had also sent and received multiple emails on behalf of E in connection with his business, making it seem legitimate and reinforcing the trust E had in her. The emails she received tied in with the information E gave Miss A in the messages he sent her. And E had demonstrated that he had sufficient funds to meet the order, and so to repay Miss A – as she'd seen his balance far exceeded the huge sum he asked her to transfer to pay for materials.

I have considered the points raised by Santander in support of its decision only to reimburse half of Miss A's loss, but they don't persuade me it can fairly rely on an exception to reimbursement set out in the CRM Code. It's very clear from the messages Miss A and E exchanged and their attempts to speak to each other in calls and to communicate by chat were hampered by poor connection and that calls dropped. So, E's assertion that he was unable to use his internet banking facilities was more credible. And whilst Miss A commented that E didn't look like his profile picture when they first communicated, he built her trust over nearly two months before she agreed to make any payments.

This was a sophisticated scam and it's important to note that there is no standard of care or specific responsibilities placed on customers via the CRM Code, and in any event, the code

does not bind customers. This is something the Lending Standards Board pointed out in its 2022 Review of adherence to the CRM Code. Overall, I'm satisfied Santander should reimburse the first payment made in September 2022 in full.

I've gone on to consider the subsequent international transfers. The investigator is correct that these aren't covered by the CRM Code as it only covers payments between "GBP-denominated UK domiciled accounts". There is no alternative code that applies to these payments, but I need to consider Santander's long-standing responsibility to be on the lookout for unusual and out of character transactions.

I appreciate that the amount Miss A has lost is significant to her and that she hadn't previously made international transfers, but I don't consider the two international payments she made to have been so unusual that Santander ought reasonably to have spoken to her and asked her questions about them. The value of each payment was relatively small and there was over a week between payments. Miss A's account balance also wasn't drained (which might indicate, for example, a safe account scam). There's also a balance to be struck; banks have obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to many legitimate payments.

Santander tried to recover Miss A's funds but wasn't successful in doing so. It is rare that a bank is able to recover funds from an international bank and they are not covered by the same obligations as UK banks.

Miss A has said that if Santander met its obligations under the CRM Code further loss would have been prevented, meaning she wouldn't have made the international transfers. Given the value of the first transaction and the fact there was nothing else unusual about it I wouldn't have expected Santander to have spoken to Miss A about it and asked questions about the reason for the payment. Instead, I consider Santander ought to have provided Miss A with onscreen warnings based on the payment reason given. I've seen evidence to confirm that Miss A chose 'Paying a friend' as the payment reason so any warning Santander gave would have been geared towards scams of this nature. Given the trust that E had built by the time Miss A made the first payment I'm not persuaded it's more likely than not an on-screen friends and family warning would have broken the spell and made Miss A realise she was being manipulated by a scammer.

Putting things right

Overall, I consider Santander should reimburse the balance of the first payment plus interest as set out below.

My final decision

I require Santander UK Plc to :

- Refund Miss A £1,567.50; and
- Pay interest on the above amount at the rate of 8% simple per year from the date it made its decision under the CRM Code to the date of settlement.

If Santander UK Plc considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss A how much it has taken off. It should also give Miss A a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 28 December 2023.

Jay Hadfield

Ombudsman