

The complaint

Miss B is unhappy because Santander UK Plc ('Santander') declined to refund £320 which she lost as the result of a scam.

What happened

The details of the complaint are well known to both parties, so I will not go into every detail of what happened here. But, in summary, both parties accept that in February 2023 Miss B made three payments totalling £320 to buy trainers, but she never received the goods.

In February 2023, Miss B was on a social media platform and came across a profile selling premium branded trainers. She saw some trainers she was interested in, and said the price seemed reasonable but not unrealistic at £80 a pair. The profile had over 80,000 followers and linked to their website which she said looked genuine, it had five-star reviews on it purporting to be from satisfied customers and even had a returns page. Believing the company to be legitimate, she decided to buy a pair of trainers and sent a payment of £80.

After sending the initial payment of £80, Miss B received a message to say they had not received the funds, and that she needed to send the payment again which would push through £160 to them, and they would then refund her £80. She was then told she had used an incorrect payment reference, so she would have to send a further payment of £160. Miss B expressed concerns and told the 'seller' that she was scared throughout this process. After she sent over the third payment, they did not send her any trainers or refund, and stopped responding to her messages. It was at this point she realised she had fallen victim to a scam and contacted Santander.

Santander investigated Miss B's complaint and issued its final response in April 2023, not upholding her complaint. In summary, they did not accept liability because they did not think that Miss B had met the requisite level of care when she was making the payments to ensure she was sending them to a legitimate fashion company. They also said they had provided her with effective warnings at the time of the payments. They said they had contacted the receiving bank, but unfortunately they had not been able to retrieve any of her funds, and the receiving bank did not accept any liability here.

Unhappy with Santander's response, Miss B brought her complaint to our service and one of our investigators looked into what had happened. They recommended that the complaint should not be upheld, so Santander should not refund the money that Miss B had lost. In summary, they agreed that Miss B had not done sufficient checks to have a reasonable basis for believing that she was dealing with a legitimate company. Miss B remained dissatisfied, and as no agreement could be reached the case 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 broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Service 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 have considered whether Santander should reimburse some or all of the money Miss B lost in line with the provisions of the CRM Code it has agreed to adhere to and whether it ought to have done more to protect Miss B from the possibility of financial harm from fraud.

The CRM Code

Santander has agreed to adhere to the Lending Standards Board Contingent Reimbursement Model ('CRM') Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. It sets out standards that banks, such as Santander, are expected to meet in terms of protecting their customers from financial harm. But it also sets out expectations that a customer should meet, too. As a starting point, a customer should receive a full refund if they fall victim to an authorised push payment scam such as this one.

There appears to be no dispute that Miss B was the victim of an authorised push payment scam here. She thought she was sending funds to purchase a pair of trainers but instead the funds went to a scammer. But, Miss B would not be entitled to a full refund if Santander can fairly and reasonably demonstrate, as they have asserted, that Miss B has failed to meet the requisite level of care under one of more of the listed exceptions set out in the CRM Code.

Those exceptions are:

- The customer ignored an effective warning in relation to the payment being made;
- 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.

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

Did Miss B have a reasonable basis for belief?

Unfortunately, I think the evidence suggests that Miss B did not have a reasonable basis for believing that she was dealing with a legitimate business when she made the transfer. I say this because:

- The payment method the 'company' requested ought reasonably to have caused concern for Miss B. They asked her to send funds to a personal bank account, not a business account, via bank transfer. The 'seller' claimed to be a legitimate business - so I would have expected Miss B to query why she was sending funds to a personal account.
- A legitimate business is more likely to ask for a card payment, and the warnings Santander provided when Miss B was setting up the payment even suggested that card payments were more appropriate than bank transfers.
- Miss B was also told to select an incorrect payment method when sending funds to ensure the money got through – it seems rather suspicious that a legitimate business would ask a customer to in effect lie to their bank.
- There were further red flags about the payment method here – the fashion website said it did not accept PayPal due to an 'incident' and that they do not take payments from one of the large high street banks without any explanation. It seems highly unusual for a legitimate website to ask for bank transfers to begin with, let alone for them to have asked for funds to be sent avoiding certain legitimate businesses.

- The website said the business address was a central London location, not a full address. The website said items could be collected from there but only if they ordered over £600 and only if they paid 50% upfront – which again seems highly irregular compared to normal business practices.
- The five star reviews were shown on the website itself – these were not verified reviews from a trusted third party platform.
- Further to this, whilst the price was not too good to be true, it was around 20% cheaper at least than the specific style and colours that Miss B had ordered. This alone may not have been cause for concern, but when combined with the factors noted above I think this should have added to her suspicions.
- Moving on to the subsequent payments, Miss B was asked to send funds to push through the funds she had already sent. The story she was given was rather implausible – she was told that they had not received her funds but somehow sending more would push the funds through to them and then she would receive her trainers and a refund. Miss B herself repeatedly expressed concerns and fear about what was going on, asked whether she could send less, asked if they could explain how it worked – so it is clear that she was not satisfied this was legitimate. I have carefully considered the messages between Miss B and the scammer and I do not think that they said anything that really explained where or how her money was caught up in the first instance, or why sending the same amount of money again would ‘push’ this through. She was told to trust the person she was messaging with as they were a legitimate business. I think at this stage Miss B ought to have considered further checks, such as contacting her bank or a trusted third party. However, instead of doing further checks, speaking with her bank or refusing to send over funds, Miss B then sent a further £160.

Considering the above, I think it would have been reasonable for Miss B to have acted with more caution here prior to sending funds. I think Santander acted fairly in saying that Miss B did not have a reasonable basis for believing that she was paying a legitimate company, and by extension it was reasonable to conclude that this exception to refund under the CRM code was applicable in this case.

Did Miss B ignore an effective warning?

Santander in their submissions to this service, referred to dynamic questions and warnings that Miss B would have seen at the point she was making the payments. And under the CRM Code, Santander can be required to present an effective warning where they identify a scam risk. But I don’t consider that the payments made by Miss B were so out of the ordinary that the bank ought to have believed there was a scam risk. The amount sent wasn’t sufficiently unusual in size, nor do I consider there to have been any concerning features of the payments to put Santander on notice that Miss B was at risk of financial harm. And so, I don’t believe Santander needed to do more than it did in terms of providing warnings about making the payment.

Should Santander have done more to protect Miss B?

In addition to their responsibilities under the CRM code, when Miss B made the payments, Santander should fairly and reasonably have had systems in place to look out for unusual and out of character transactions or other signs that might indicate that Miss B was at risk of fraud or financial harm (amongst other things). However, as outlined above, there was nothing about the payments that ought reasonably to have alerted Santander that Miss B was at risk of fraud or financial crime – so I do not think that they needed to intervene with the payment at the time it was being made.

Recovery

I have also considered whether Santander could have done more to try to recover the money once it had been told of the scam. We would expect a business to take reasonable steps to try and recover the money from the bank it was sent to, with urgency, after their customer notifies them that they fell victim to a scam. Santander did try to recover the funds Miss B lost – they notified the receiving bank within less than an hour of Miss B reporting the scam. Unfortunately, the receiving account had already been emptied so no funds were available to recover. So I do not think that Santander could have done anything further to recover her funds.

My final decision

My final decision is that I do not uphold this complaint, and require Santander UK Plc to do nothing further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 31 October 2023.

Katherine Jones
Ombudsman