

## The complaint

Mrs H is unhappy that Santander UK Plc won't reimburse money she lost as a result of a scam.

## What happened

Mrs H received a call from someone claiming to be from Santander. They said that there had been an attempt to use her card in another city and that her account was at risk. So she'd need to move money to another, safe account. They also asked whether Mrs H had any other accounts and suggested that they too might be at risk. Mrs H confirmed she had an account with another firm – "N" and was advised that financial businesses work together on this type of fraud. Mrs H was also told to download remote access software to her device, supposedly to help secure her account further.

Mrs H made a payment from her account at N to her account at Santander. She says the fraudsters 'generated' amounts that she needed to pay from her Santander account. The fraudsters provided her with account details which related to another firm ("P"). Mrs H says that she was advised that P would show on her screen, but she can't recall whether it actually did. She also doesn't recall being asked what the payments were for or being provided with any warnings.

Mrs H made four payments totalling £1,659 over the course of less than 10 minutes on 3 May 2023. When the caller hung up without explaining how Mrs H could access her money, she became concerned and contacted Santander.

It considered her losses under the Lending Standards Board's Contingent Reimbursement Model "CRM Code" which requires signatories like Santander to reimburse victims of APP scams in all but a limited number of circumstances. In this case it said that it could rely on one of the exceptions to full reimbursement:

*"In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without a reasonable basis for believing that:*

- (i) the payee was the person the Customer was expecting to pay;*
- (ii) the payment was for genuine goods or services; and/or*
- (iii) the person or business with whom they transacted was legitimate."*

Santander did, however, accept it could have done more to prevent the scam – so it reimbursed Mrs H 50% of her losses. It also tried to recover Mrs H's money, but doesn't appear to have received a response.

Mrs H thought that she should be reimbursed in full, so she referred a complaint to our service and one of our Investigators upheld it. They thought that Mrs H had acted reasonably when she made the payments, particularly given the apparent risk facing her accounts. They thought the caller's knowledge of her general location and the last use of her card would have been persuasive to her. They also thought that Santander should have questioned the

third payment – given the concerning and rapid series of payments which took place. And, had it done so, the scam would have come to light and the loss would have been prevented.

So they recommended that Santander reimburse Mrs H the remaining 50% of her losses as well as 8% simple interest from either the date Santander declined her claim under the CRM Code (in the case of the first two payments) or the date of the payments (in the case of the final two payments).

Santander didn't agree, in summary, it said:

- The caller didn't go through any verification with Mrs H and didn't know any genuine information about her. Had she asked the caller to prove their identity the scam would have come to light.
- The call came from a private number, but Mrs H didn't question this.
- Santander doesn't have access to customer's accounts at other financial businesses, Mrs H ought to have known this.
- Mrs H was given no information about how to access her account with P or how the funds would be returned to her.
- Overall it felt there were numerous red flags throughout which ought to have prompted Mrs H to question the caller before going ahead with the payments.

As no agreement could be reached, the case was 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.

The starting point under the relevant regulations is that Mrs H is responsible for payments she's authorised herself – even those that she has been tricked into making. But, as noted, Santander are a signatory to the CRM Code. It also ought, fairly and reasonably, to be on the lookout for out of character and unusual transactions or other indications that its customer might be at risk of financial harm from fraud.

Turning to the CRM, Santander relies on the exception to reimbursement set out above. It thinks that Mrs H ought to have questioned the caller further and, if she had done, the scam would have been revealed.

It's important to state that I recognise that there are more sophisticated iterations of this scam. The fraudsters did not 'spoof' Santander's genuine number and they do not seem to have known a great deal of information about Mrs H (she only *thinks* they knew the last use of her card and it seems this knowledge might have been acquired after she gave them remote access to her device).

But the test under the CRM Code isn't entirely objective. It permits me to take into account the victim's characteristics to decide whether the belief they held was a reasonable one. And Mrs H certainly did hold that belief, even if just for the short time that she spoke to the fraudsters – her actions can't plausibly be explained in any other way. She acted in the interests of securing her accounts.

So, while I must consider the reasonableness of her actions, I must do so taking into account how Mrs H saw the situation, including what she appears to have known and not known. Of most value to this assessment is the call that took place immediately after she fell victim to the scam. While Mrs H expresses regret and fails to understand how she could have fallen

for the scam, it's evident that, until the end of the call with the fraudsters, she suspected absolutely nothing. She reiterated this in her complaint to our service. She also didn't seem to understand even the purpose of the software that was downloaded, let alone that it could be used for nefarious purposes. She questioned how she could possibly distinguish between genuine and fraudulent calls and the advisor's suggestion that she could have called the bank seems to have come as a complete surprise to her.

It appears that Mrs H was open to persuasion and was deferential to the fraudster who she believed had far superior knowledge to her own. I don't think she could identify, in the pressure of the situation, that the call presented a risk to her. And, once she'd agreed to download remote access software to her device, I think the fraudsters were able to exploit the information they obtained to further convince her she was speaking to the bank. Due to that remote access, it's also not clear whether Mrs H would have seen any of the warnings that Santander say it presented (she certainly doesn't recall them).

I think it's fair and reasonable for me to take all of this into account when deciding whether Mrs H's belief was reasonably held. Having done so, I think that Mrs H genuinely didn't recognise the risk here and though there are steps that she might have taken to verify the identity of the caller, I don't think that it occurred to her to take these steps.

Overall, I don't think Santander has demonstrated that Mrs H lacked a reasonable basis for belief and I think that she should be refunded in full under the provisions of the CRM Code. Although the Investigator went onto make a finding that Santander should have also picked up on the third transaction as being unusual and should have questioned it before it debited Mrs H's account, I don't think it is necessary for me to make that finding. The difference in redress amounts to no more than a few pence and I think that asking Santander to refund Mrs H in full under the CRM Code, as well as pay 8% simple interest per annum on the outstanding loss, fairly and reasonably puts Mrs H in the position she should be in.

### **My final decision**

For the reasons I've explained, I uphold this complaint and instruct Santander UK Plc to pay Mrs H:

- the outstanding loss - £829.50.
- 8% simple interest per annum on that amount from the date Santander declined Mrs H's claim under the CRM Code to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 11 January 2024.

Rich Drury  
**Ombudsman**