

The complaint

Mr H complains that Santander UK Plc ('Santander') won't refund the money he lost in a scam.

What happened

Mr H is represented in this case but for ease I'll refer to Mr H throughout this decision.

Mr H says that he met someone I'll refer to in this decision as J on a dating website in June 2022 and they started to communicate and develop a relationship. Initially J and Mr H got to know each other but soon after, J started to ask Mr H for money – which he sent from an account with another bank. Initially the funds were to help J with living expenses as she said she'd been affected by the pandemic.

In July 2022 Mr H received an email from someone who said he was a solicitor who was acting for J. He asked for Mr H's help in receiving 150kg of gold bars that were with a security company in Asia. The solicitor said he needed a trusted person to claim the gold consignment on J's behalf.

On 7 July 2022 Mr H said he didn't want to continue with the relationship with J because he didn't think it was appropriate for J to harass him for money. But J continued to communicate with Mr H and discussed a deal she was involved in to import and sell cosmetic products. I understand that J told Mr H that she didn't have a bank account because of her poor credit rating but had signed a contract with a company I'll refer to as C that was due to pay her 95,000 USD for her cosmetic products. J provided a copy of this contract to Mr H. She told Mr H she would gain a profit of 55,000 USD.

At the end of July 2022 Mr H said he had decided to block J because she was constantly demanding cash, and this was the behaviour of an online scammer. At the same time, Mr H pointed out numerous errors with the contract with C that J had provided and concluded that it was unlikely to originate from a genuine company. Mr H also noted that J's solicitor wasn't practicing legally in the UK.

But after this J kept contacting Mr H. Mr H asked her questions about the contract with C and her obligations. J then asked Mr H for £3,500 for a certificate. Mr H questioned the cost and the fact J told him it was being delivered overnight on a flight. He also asked if J had email correspondence from the organisation that was due to provide the certificate, but J said she didn't. I'm uncertain if Mr H paid this amount from another account but it doesn't form part of this complaint. Mr H did tell J on 1 August that he didn't want to be involved with her anymore, but she continued to communicate with him and told him she loved him. J also provided Mr H with certificates dated 3 August 2022 from the Food and Drug Administration.

On 4 August 2022 J told Mr H that she needed another certificate that cost £1,860. She asked Mr H to send this amount to the account of a manager who was helping her with the application. Mr H asked to speak to the manager directly, but this didn't happen. Shortly afterwards, J told Mr H the cost had increased to £3,860 so J needed another £2,000 to get the documents. Mr H paid £2,000 from his account with Santander. The following day J said there was a further amount of £1,870 to be paid to clear stock from the airport. There is a debit of £1,900 from Mr H's Santander account on this day so I think it's likely this is what the payment related to.

J continued to ask Mr H for money and on 11 August 2022 he called Santander to report a scam. He had made two payments from his Santander account – for £2,000 and £1,900.

Santander considered Mr H's complaint under the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) and said that liability should be split between Santander and Mr H. This was because Santander didn't provide sufficient warnings when the payments were made but Mr H didn't take reasonable steps to check that the person he was paying was legitimate.

Mr H wasn't happy with Santander's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that Santander do anything more. This was because he didn't think Mr H had a reasonable basis for believing J was legitimate.

Mr H didn't agree with the investigator's findings, so his complaint has been passed to me to consider. In summary, he said:

- Scammers in romance scams play on victims' emotions and make it harder for them to spot red flags.
- He was given fake documentation that looked legitimate and supported what J was saying.
- J gave him a copy of her passport to build trust.

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 for my considerations is that, under the Payment Services Regulations 2017 and the terms of his account, Mr H is liable for transactions he's carried out himself. But Santander are signatories to the CRM Code and also have a longstanding obligation to be on the lookout for unusual and out of character transactions which might indicate their customer is at risk of financial harm from fraud.

There's no dispute here that Mr H was tricked into making the payments. But this isn't enough for him to receive a refund under the 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. 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.

There are other exceptions that do not apply to this case.

Santander has accepted responsibility for 50% of Mr H's loss so I do not need to consider whether Santander met the standards expected of it under the CRM Code. So I've gone on to consider whether Mr H had a reasonable basis for belief as set out above.

Taking into account all the circumstances of this case, I think the concerns Santander has raised about the legitimacy of the transactions Mr H made are enough to support its position that it can choose to rely on an exception to reimbursement. I don't think Mr H had a reasonable basis for believing J was legitimate and will explain why.

Before J introduced her business relationship with C, Mr H received an email from someone purporting to be a solicitor who asked for Mr H's help with claiming a consignment of gold. When Mr H asked why his help was needed, he was told that J's late father wanted a foreign beneficiary to claim the gold as he didn't want J to use it or invest it in Asia. This story wasn't believable, and Mr H asked various questions because of his concerns. He also established that the solicitor wasn't practicing legally. So I consider the interaction Mr H had ought reasonably to have made him more cautious in his subsequent dealings with J.

There are numerous indications in the messages and emails Mr H exchanged with J that he had concerns about her requests for money and whether they were legitimate. By the time Mr H made these payments from his Santander account his concerns had reached their peak and his relationship with J wasn't good. I have listed below some of the comments Mr H made before and around the time of the payments:

7 July 2022

"I don't think it is appropriate in any way for you to be harassing me for money in the way you are."

1 August 2022

"It's completely inappropriate to be asking for money in this way. I don't want to do this or be involved with you anymore"

"I'm tired of second guessing your motivations and trying to work out if you are genuine"

"...there's always another demand".

4 August 2022

"Our relationship is about as stable as a 3 legged chair at the moment".

5 August 2022

"I can't do this any more. I'm only connected to your life through this app...and you expect me to support you financially."

"You are the most manipulative and down right awful person that I've ever met

Never contact me again"

"I'm going to the police"

I'm also not satisfied that J took steps to persuade Mr H that she was telling the truth or to restore his faith in her and in their relationship. At the time Mr H made the relevant payments the majority of the messages J sent related to her business and the need for funds.

I don't consider that the documents J provided to Mr H were persuasive enough to overcome his concerns. Mr H had significant issues with the contract J sent to him about the sale of cosmetics products. He set these concerns out in detail to J. They primarily related to inconsistencies in C's address. Mr H went on to say, *"This tells me that this contract is unlikely to originate from a genuine company"*.

J provided Mr H with a copy of her passport. But Mr H noted that it was out of date and asked J questions about how she could stay in the United States if her passport was out of date. So I don't think that the provision of J's passport built trust between them.

Mr H also questioned the original premise of the scam – that J didn't have a bank account because of a low credit score. He said that anyone can have a bank account and a low credit score was relevant to credit. Mr H even did some research and provided J with a link to information about opening a bank account.

Throughout his relationship with J, Mr H questioned what she told him about her new business venture and the reasons for her payment requests. When J said a certificate was being flown to her overnight Mr H pointed out that it would be quicker and cheaper to scan

the certificate, Mr H asked if J had corresponded with the organisation issuing the certificates by email, and later when Mr H asked to speak to the person J said was helping her to get the relevant certificates. J's reasons at each point weren't persuasive. Mr H didn't ask for things like invoices showing the amounts J was asking him to pay though or for other evidence.

I've also taken into account the fact that Mr H never spoke to J or saw her on a video and the fact that although J told Mr H payments were for certificates to enable her to trade the two payments he made from his Santander account were to an individual and not to the organisation concerned. I don't consider a plausible explanation for this was provided to Mr H.

Taking into account all the evidence I've been provided with, I don't consider Mr H had a reasonable basis to believe J was legitimate when he made the two payments I am considering from his Santander account.

Santander should contact the bank that received Mr H's funds as soon as possible after the scam was reported to try to recover any funds that remain. The evidence I have seen shows that Santander did so, but no funds remained to return to Mr H. I don't think Santander could have done anything more.

Overall, whilst I'm sorry to hear about this cruel scam, I can't reasonably ask Santander to do anything more.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 September 2023.

Jay Hadfield
Ombudsman