

The complaint

Mr M complains that Santander UK Plc won't refund the money he lost when he was the victim of a scam.

What happened

In October 2023, Mr M was looking to purchase a portacabin to use as a garden office at his property. He saw one he was interested in advertised on the marketplace of a social media website, and so contacted the seller. He was initially told someone else had agreed to buy the portacabin so it was no longer available, but was then told those buyers didn't have the funds so he could buy it if he made payment quickly. Mr M then made a payment of £610 from his Santander account to the bank details the seller gave him.

Unfortunately, the seller stopped responding to Mr M after he made the payment and the portacabin was never delivered to him. So he reported the payment he had made to Santander as a scam and asked it to refund the money he had lost.

Santander investigated and said it felt it had met its obligations to try to prevent the scam, but that there was more Mr M could have done to protect himself. So it didn't agree to refund the money he had lost. Mr M wasn't satisfied with Santander's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think Mr M had a reasonable basis for belief that the sale was genuine, and so didn't think Santander was required to refund the payment he had made. They also thought Santander had done what we'd expect to try to recover the money. Mr M disagreed with our investigator, so the complaint has been passed to me.

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 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. However, where the customer 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 customer even though they authorised the payment.

Santander is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr M fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- 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:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

Was Mr M vulnerable, under the CRM code?

The CRM code says that, where a customer is vulnerable, the bank should refund them in full – regardless of whether any of the exceptions to reimbursement apply. And it defines a customer as vulnerable if it would not be reasonable to expect them to have protected themselves from the particular scam they fell victim to.

Mr M has argued that he was vulnerable as he was unable to identify the seller as a scam and didn't have sufficient knowledge or experience about how scammers operate. But while my intention isn't to diminish the impact this scam has had on him, a lack of prior knowledge about scams isn't usually enough for a customer to be considered vulnerable. And, from what he's told us, I don't think his circumstances were such that he was unable to protect himself from this particular scam.

And so I don't think he meets the definition of vulnerable from the CRM code, and I think the exclusions to reimbursement could still apply here.

Did Mr M have a reasonable basis for belief when making the payment?

Santander has argued Mr M didn't have a reasonable basis for belief when making this payment, because he didn't do enough to protect himself before making it. And while I appreciate he has been the victim of a cruel scam, I do think there were a number of things about what was happening and what he was told that should have caused him significant concern.

From what I've seen, the portacabin Mr M thought he was buying was listed for sale at significantly below market value. It appears to have been listed for sale at less than 50% of the usual market value of similar cabins, and Mr M doesn't appear to have been given any explanation for the price being so low. So I think this should have caused Mr M significant concern that the price the portacabin was being listed at was too good to be true.

Mr M also doesn't appear to have asked the seller for any further details or evidence of the portacabin, beyond the photos in the advert. He doesn't appear to have done any checks into who the seller was, and just assumed they were genuine because they were posting in a local group on the social media marketplace. And while I appreciate he was told there were other people interest in buying the portacabin and the sellers were away on holiday, he made the payment before seeing the portacabin in person. And given the amount of money he was paying, I think it's reasonable to expect him to have done more checks than he did before sending the money.

Mr M was also shown several warning messages by Santander before making the payment, which said they were to help protect him from fraud. These messages warned him there was a higher risk if you haven't seen what you're paying for in person, suggested he carry out checks on the item and the seller to protect himself from scams, and said he must not send money unless he'd taken steps to check the product and seller are legitimate. So as Mr M

hadn't seen the portacabin in person and hadn't done significant checks himself into the seller, I think these warning messages should have also caused him some concern.

I sympathise with the position Mr M has found himself in and I appreciate that he assumed anyone posting on the local group would be genuine. But I think there were a number of things here which should have caused him significant concern. And I don't think the checks he did or the seemingly genuine information he was given should have been enough to overcome the concerns I think he should have had.

So I think Santander has established that Mr M made the payment without a reasonable basis for belief that it was genuine.

Santander has therefore established that one of the exceptions to reimbursement under the CRM code applies here, and it does not have to refund Mr M all the money he lost.

Did Santander meet its obligations under the CRM code?

Even though I don't think he had a reasonable basis for belief when making the payment, Mr M may still be entitled to a refund of some of the money he lost if Santander didn't meet its obligations under the CRM code – one of which is to provide effective warnings when it identifies a scam risk.

But the payment here wasn't for a particularly large amount of money. Other payments had been made out of Mr M's account for similar and larger amounts in the months before the scam. And the payment didn't leave the balance of Mr M's account at a particularly unusual level.

So I wouldn't have expected Santander to identify a scam risk as a result of this payment. And so I don't think it was required to provide an effective warning before Mr M made the payment or that it has failed to meet its obligations under the CRM code by failing to do so.

Did Santander do enough to recover the money Mr M lost?

We expect banks to take reasonable steps to try to recover the money their customers have lost, once they are made aware of a scam.

Santander's evidence shows it contacted the bank the payment was sent to within a reasonable amount of time, to ask for the money to be returned. So while unfortunately the bank the money was sent to wasn't able to return any of the money, Santander has done all I would expect it to have done.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 April 2024.

Alan Millward
Ombudsman