

The complaint

Mr and Mrs P complain that Santander UK Plc won't refund all of the money they lost when they were the victims of a scam.

What happened

In March 2023, Mr and Mrs P received a text message saying it was from Santander and asking them to call a number it gave if they didn't recognise the payment it mentioned. As they didn't recognise the payment, Mr and Mrs P phoned the number and spoke to some people who said they worked for Santander. They were told another payment had been attempted and their account was at risk, so they needed to transfer their money to a new account in order to keep it safe. Two payments were then made out of Mr and Mrs P's Santander account – totalling £15,120.12.

Unfortunately, we now know the text message and the people Mr and Mrs P spoke to were part of a scam.

After the scam was uncovered, Santander investigated and accepted it didn't stop the payments or show Mr and Mrs P an effective warning before the payments were made. But it also said Mr and Mrs P didn't take steps to verify the message or the people they spoke to were genuine. So it offered to refund 50% of the money they had lost. Mr and Mrs P weren'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 and Mrs P had a reasonable basis for belief that the payments they were making were genuine, or that Santander had done what we'd expect it to do. So they thought Santander's offer to refund 50% of the money Mr and Mrs P had lost was fair. Mr and Mrs P 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.

I appreciate Mr and Mrs P have said they weren't given the sort code and account number for the new account the payments went to and so think the payments weren't set up as payments would usually be. But Santander's evidence shows the payments were set up using Mr and Mrs P's online banking details, and Mr and Mrs P have said they didn't give the people they spoke to these details or download anything onto their device. They also appear to have been aware the payments were being made and been happy for them to go through, at least at the time.

So I think it's likely Mr and Mrs P did authorise the payments. And banks are expected to make payments that a customer authorises. So while I recognise they didn't intend for the money to go to scammers, the starting position in law is that Santander was obliged to follow their instructions and make the payments.

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 and Mrs P 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.

Were Mr and Mrs P 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 and Mrs P have mentioned their age, that English is their second language, and that they are not well-versed in scams or making bank transfers. Any my intention isn't to diminish the difficulties these things can cause, and I don't underestimate the impact they had. But, based on what I've seen of their interactions with Santander and what they told it about their circumstances after the scam was uncovered, I don't think their circumstances were such that they were unable to protect themselves from this particular scam.

So I don't think Mr and Mrs P meet the definition of vulnerable from the CRM Code, and so the exclusions to reimbursement could still apply.

Did Mr and Mrs P have a reasonable basis for belief when making the payments?

Santander has said Mr and Mrs P didn't have a reasonable basis for belief when making the payments, because they didn't do sufficient checks into who they were speaking to. And while I appreciate that they have been the victims of a cruel and sophisticated scam and that the scammers made them feel under pressure to act quickly, I do think there were a number of things about what was happening and what they were being told that should have caused them significant concern.

The text message Mr and Mrs P initially received didn't come from a number associated with Santander, and just appeared on their phone as from an unknown mobile phone number. So I think this should have caused them significant concern about whether it was genuine. And there were a number of reports online of the number the message gave to call being involved in scams, which I think Mr and Mrs P would have seen if they had tried to check the number.

The people Mr and Mrs P then spoke too don't appear to have known any personal details about them or gone through any identity verification process, as I would expect a genuine

bank to have done on a call with its customers. And given the amount of money Mr and Mrs P were being asked to move, I think it's reasonable to expect them to have tried to confirm who they were talking to in some way. So I think this lack of any security process should also have caused them some concern.

The account Mr and Mrs P were asked to send their money to wasn't in their name, and was instead in the name of someone they didn't know. So I think this should have caused them significant concern. And while they say they did ask about this, they say they were then told it was just a temporary account and I don't think this explanation should have been enough to satisfy their concerns.

Mr and Mrs P were also told to say the payments were for paying their family, which wasn't the case. And I think being asked to give incorrect information and mislead their bank about the payment should have caused them significant concern.

I sympathise with the position Mr and Mrs P have found themselves in. But I think there were a number of things here which should have caused them significant concern. And I don't think they did enough, or that the seemingly genuine information they were given should have been enough, to satisfy those concerns. So I think Santander has established that they made the payments without a reasonable basis for belief that they were 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 and Mrs P all the money they lost.

Did Santander meet its obligations under the CRM code?

Even though I don't think Mr and Mrs P had a reasonable basis for belief when making the payments, they may still be entitled to a refund of some of the money they 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.

Santander has accepted that it didn't provide effective warnings to Mr and Mrs O when the payments were made, as it should have done. And so it has accepted that it didn't meet its obligations under the CRM code.

Overall then, I think Santander has established that Mr and Mrs P made the payments without a reasonable basis for belief that they were genuine. But I also think Santander failed to meet its obligations. And, where this is the case, the CRM code sets out that Mr and Mrs P are entitled to a refund of 50% of the money they lost.

Mr and Mrs P have argued that Santander should have identified that the payments were out of character and unusual activity for them, and so intervened to stop them being made. But, even if this was the case, it wouldn't change the outcome of this complaint. For the same reasons I think they didn't have a reasonable basis for belief when making the payments, I'd think it would be reasonable for Mr and Mrs P to bear some responsibility for the loss they suffered. So I'd still only think it was fair for Santander to refund 50% of the money Mr and Mrs P lost.

As Santander has already offered to refund 50% of the money Mr and Mrs P lost, I think this is a fair and reasonable outcome to this complaint and I don't think it would be fair to require Santander to refund anything further.

Did Santander do enough to try to recover the money Mr and Mrs P 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 payments were sent to within a reasonable amount of time, to ask for the money to be returned. So it has done all I would expect it to have done. And the bank the money was sent to was able to recover £7.12, which has now been returned to Mr and Mrs P.

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 and Mrs P to accept or reject my decision before 29 December 2023.

Alan Millward
Ombudsman