

Complaint

Mr P is unhappy that Santander UK Plc didn't reimburse him after he told it he'd fallen victim to fraud. Mr P is represented by a family member, but for simplicity's sake I've generally referred to Mr P throughout the text of this decision.

Background

In May 2021, Mr P began a relationship with someone who I'll refer to as Ms C. Ms C was also responsible for introducing Mr P to another individual, Mr B. Mr B befriended Mr P and in August 2021 and, shortly afterwards, Mr P started to lend him money. I understand Mr B had recently moved to the area. He told Mr P that he was in financial difficulties and needed to borrow money to pay for essential bills and travel expenses. As I understand it, the two would generally keep in contact electronically and didn't regularly meet face-to-face. Mr B assured Mr P that these loans would be repaid. He said he had money in his home and would repay Mr P with interest.

From 20 August 2021 until 20 December 2021, Mr P made many payments to Mr B. Most of the payments were for fairly small values, but the total amount he transferred ended up being over £10,000. It was only when Mr P ran out of money and asked a family member if he could borrow some that it came to light what he'd been doing. At the time, as far as Mr P was concerned, he was simply helping out a friend. However, it is now argued that he was vulnerable and that Mr B took advantage of that by defrauding him.

The matter was reported to the police and Santander. The police decided that this was a civil matter, rather than a criminal one. Santander looked into things, but it didn't agree to reimburse him. It said that his claim wasn't covered by the CRM Code because it was a civil issue, rather than fraud. Mr P was unhappy with the response he received from Santander and so the complaint was referred to this service. It was looked at by an Investigator who didn't uphold it. She said that the evidence wasn't strong enough to say that Mr P had fallen victim to an APP scam.

Mr P disagreed with the Investigator's opinion and so the complaint has been passed on to me to consider and come to a final decision.

Findings

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 at 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, that isn't the end of the story. Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams in all but a limited number of circumstances.

However, none of the requirements of the Code are applicable unless Mr P is the victim of a scam, rather than being in some other kind of dispute. The Code defines an APP scam as:

“...where the Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”

The question this case turns on then is whether the purposes for which Mr P made these transfers were, in fact, fraudulent. To reach a determination on that point, I need to consider what the intentions of Mr B were – in other words, did he plan to deceive Mr P and take his money from the start? I can't know for sure what was in Mr B's mind when he was taking money from Mr P. I have to look at the available evidence and infer what his intentions most likely were. Unless that evidence shows that it's more likely than not that Mr B intended to defraud Mr P, I can't make a finding that Mr P is a victim of fraud.

I've considered that point carefully and, having done so, I'm not persuaded that there's enough evidence to say that he was the victim of APP fraud, as defined in the Code. I've seen messages exchanged between Mr B and a member of Mr P's family. In those messages, Mr B attempts to give reasons as to why he needed to borrow money and stressed his intention to pay Mr P back. If Mr B had always intended to defraud Mr P, it's unlikely that he'd have continued to communicate with Mr P's family. There wouldn't be an obvious motive for doing so.

I can also see that Mr B did transfer some funds back to Mr P. I accept that these were trivially small when compared with the total amount Mr P had transferred. It does, however, make it much harder to unambiguously conclude that there was an intention to defraud throughout. It's also significant that, at least until now, the police haven't seen fit to take any further action in connection with the allegations.

It's difficult to rule out the possibility that Mr B did intend to repay Mr P at the time he borrowed money from him but that his circumstances changed or his personal finances were so chaotically mismanaged that he didn't realise he wouldn't be able to. Unfortunately, based on the available evidence, that's just as likely a conclusion as Mr B intending to commit fraud. I know that Mr P will be greatly frustrated by the outcome I've reached here. I want to make it clear that I can't categorically rule out that what happened to him was fraud. It's possible that it was, but I'm afraid the weight of the evidence doesn't support such a finding.

Mr P has submitted a medical report prepared by a consultant psychiatrist. This report confirms that Mr P was a vulnerable individual at the time of these events. He was suffering with depression and, the report observes, this can affect a person's ability to balance the pros and cons of a particular course of action. In other words, it's possible (or even likely) that this wouldn't have happened to Mr P but for his vulnerabilities. Unfortunately, that doesn't mean that what's happened to him is APP fraud.

I'm mindful that the issue has been reported to the police and that, at present, no charges have been brought against Mr B. It is, of course, possible that the situation may change and new material evidence may come to light about Mr B's actions and intentions. That could affect the outcome here. However, I have to decide the case on the facts and information before me. And currently I'm not able to conclude there is convincing evidence that Mr P has been the victim of an APP scam. If new material information does come to light, at a later date, then Mr P can bring a new complaint to Santander. But I'm satisfied, based on the available evidence that I have seen and been presented with by all parties, that this is a civil dispute.

I don't say any of this to downplay or diminish what Mr P has been through and the emotional impact this has had on him. However, my role is limited to looking at the actions

and inactions of the bank and, while I'm sorry to have to disappoint him, I'm satisfied Santander's decision under the CRM Code was correct.

Final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 May 2024.

James Kimmitt
Ombudsman