

## The complaint

Miss G complains that Santander UK Plc ('Santander') declined to refund her in full when she lost approximately £4,900 as a result of a scam.

## What happened

I issued a provisional decision in November 2023 to explain why I thought Miss G's complaint should be upheld. And I said I'd consider anything else anyone wanted to give me. This is an extract from my provisional decision:

*"The circumstances of this complaint are well-known to both parties, so I will not go into every detail of what happened here. But, in summary, in October 2021 Miss G was tricked into sending approximately £4,900 as the result of an impersonation scam.*

*In October 2021, Miss G explained she received a text purporting to be from a well-known delivery company advising her that she needed to pay £1.40 for re-delivery of a parcel. She was expecting a parcel from the delivery company at the time, so this text message seemed credible to her. She followed a link within the text which took her to what appeared to be the delivery company's website, and so she entered the relevant details to make the payment of £1.40.*

*Miss G received a phone call three days later purporting to be from Santander. They told her that someone had breached the security on her account and was trying to make payments and asked her if she could think of how this could have happened. Miss G said she mentioned the delivery company text and they told her this was a common scam, and it was likely how her account had been accessed. They asked if she had any other accounts, and when she confirmed she had savings with another bank they said this account could be at risk too. This caused Miss G to panic that she might lose her money. 'Santander' persuaded her to move her money from her savings to her Santander account. They said they were creating an account in a randomly generated name for her to use to safeguard her funds. They said it had to be a randomly generated name to prevent the scammer from gaining further access to her funds. They told her to send her funds, which by now included her savings, in three instalments because otherwise she would not be able to transfer all of her money across and then she would lose it all to the scammer. She sent the first two, but the third was blocked.*

*Miss G realised she had fallen victim to a scam when she received a call from the real Santander, which prompted her to look up the phone number that had called her online and saw that other people had reported it was a scam phone number. She spoke to Santander and explained what had happened, and they confirmed she had indeed fallen victim to a scam.*

*Santander investigated what had happened and offered to refund 50% of the payments Miss G made to the scammer. In summary, they did not think Miss G had established that she had met the requisite level of care when she was making the payments – but they did accept they had not given her an effective warning when she was making the payments. They also said the CRM signatory receiving bank was not liable here. When Santander contacted them*

there was only approximately £6 remaining in the receiving account, which was returned to Miss G.

Miss G was unhappy that Santander declined to refund more of her losses so she asked our service to investigate her complaint. One of our investigators looked into what had happened, and they thought that Santander's offer was fair and reasonable in the circumstances. They agreed that Miss G did not have a reasonable basis for believing that the payments were going to Santander. Miss G did not agree. Her representatives responded on her behalf and said, in summary:

- Miss G said she believed she was talking to her bank as they sounded very professional and friendly, had normal disclaimers such as saying that the call was being recorded for training and security purposes and called from on '0800' number. She explained that they also took her through usual security questions, spoke to her for about half an hour and even gave her advice on fraud and scams and how to avoid falling victim to them in the future and pretended to go through the process of ordering a new card for her.
- The scammer went above and beyond to make the call mirror a genuine call from Santander – there was even background noise as if they were in an office and hold music when she had to be put on hold. She was not aware that she could be talking to a scammer as they had done such a sophisticated job at appearing legitimate. This gave Miss G a reasonable basis for believing she was talking to Santander.
- The scammer was able to create a real sense of urgency during the call. This led to significant panic within Miss G, making her truly believe that time was of the essence and that if she did not do what she was told she could lose her money to a scammer.
- These factors mitigate the fact she didn't think to look up the number that was calling her online sooner.
- There were published final decisions from our service with very similar circumstances in which we found that customers did have a reasonable basis for believing that they were speaking with their banks.

As no agreement could be reached, the case has been passed to me to decide.

### **What I've provisionally 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. Having done so I am minded to reach a different outcome to our investigator, I'll explain why.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Service Regulations and the terms and conditions of the customer's account. However, where the consumer 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 consumer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I have considered whether Santander should reimburse some or all of the money Miss G lost in line with the provisions of the CRM Code it has agreed to adhere to and whether it ought to have done more to protect Miss G from the possibility of financial harm from fraud.

### **The CRM Code**

Santander is a signatory of the Lending Standards Board Contingent Reimbursement Model ('CRM') Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. It sets out standards that banks, such as Santander, are expected to meet in terms of protecting their customers from

financial harm. As a starting point, a customer should receive a full refund if they fall victim to an authorised push payment scam such as this one.

There appears to be no dispute that Miss G was the victim of an authorised push payment scam here. She thought she was moving her money to keep it safe on Santander's advice, but instead it went to a scammer. But, Miss G would not be entitled to a full refund if Santander can fairly and reasonably demonstrate, as they have asserted, that Miss G has failed to meet the requisite level of care under one of more of the listed exceptions set out in the CRM Code.

Those exceptions are:

- 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: 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 further exceptions within the CRM Code, but they do not apply in this case.*

### **Did Miss G have a reasonable basis for belief?**

It is for banks to show that it would be appropriate to invoke an exception to refunding in full under the code – and I am not minded to say that Santander have demonstrated this here. I do think there are some clear checks that could or should have been done by Miss G with the benefit of hindsight – checking the phone number and questioning why she had to move money from an account with another bank to her unsafe Santander account for example. But when considering the complexity and sophistication of the scam, I am minded to conclude that Miss G acted reasonably when she fell victim to the scam. I'll explain why.

- This scam had more than one step to it – it started with a text message claiming to be from a delivery company which tricked Miss G in to parting with a small amount of money, before moving onto what is known as a 'safe account' scam. This meant that when Miss G received a call purporting to be from Santander, it would have appeared more plausible that it was her bank. They were able to seem like they were calling to help her and appeared to work with her to try and work out how her account and details had been compromised. It seems reasonable that this would have added a level of credibility to the person calling her that may not have been there if they had just appeared to cold call her.
- In addition to this, the scammer had done a number of things at the start of the call which would have made the phone call sound realistic. They mimicked procedures which banks would follow in phone calls including going through security procedures and telling her the phone call was being recorded for monitoring and security purposes. They called from an '0800' number rather than a withheld or mobile number. She said that they also sounded like they were calling from a call centre due to background noises. I think that these elements would have made Miss G less likely to question the authenticity of the caller – as nothing would have stood out as unusual when compared to a normal phone call she might have had with her bank. The phone call continued for quite some time – this gave the scammer time to build up trust with Miss G before they convinced her to move funds out of her account. In this time Miss G reports that they appeared to sound professional and friendly. They educated her on avoiding falling victim to scams in the future and even pretended to order her a new card – in line with what one might expect from their genuine bank. They were able to use this trust to persuade Miss G that they were a professional and that the safest thing she could do was to follow their instructions.
- Furthermore, given the sense of panic that the situation had instilled in Miss G, I do not think she would be thinking as clearly as we can with the benefit of hindsight. I do appreciate that if she had gone online and searched for the phone number which had called her, she may have been able to prevent the scam. I also know with the benefit

*of hindsight that it seems strange that she would be asked to move money into her Santander account from her savings to send on – particularly since she had been persuaded that her Santander account was not safe. But I also think that she believed she was talking to her own bank for the reasons outlined above – and she had seen they called from an '0800' number so she did not think anything stood out as suspicious about the number that called her. The scam was sophisticated, and the scammer clearly managed to build both trust and panic. It seems that they were able to convince her that they were trying to help her - so in the moment, I can understand why she did not think to question what she was being told she had to do. Her priority in these moments was safeguarding her money, and so she trusted that her bank could help her do this.*

*I am minded to say that Santander have not persuaded me that Miss G's actions amounted to her acting unreasonably here – and so it follows that they should not have declined to refund part of her claim under the code under this exception.*

***Did Miss G ignore an effective warning in relation to the payment being made?***

*In line with provisions of the Code, Santander needs to be on the lookout for factors that might indicate an enhanced risk that Miss G's payment instructions were being made as part of a scam. Where they identify such a risk, they need to take reasonable steps to provide the customer with an effective warning. If such a warning is provided, and their customer ignores it, there may be an exception to the starting position of a full refund under the Code.*

*Santander, by their own admission, did not provide an effective warning to Miss G in this case. I agree this is the case – and so I am minded to say that they have not demonstrated that any exception to refunding Miss G in full under the code applies here.*

***Recovery***

*For completeness, I have also considered whether Santander could have done more to try to recover the money once they had been told of the scam. I would expect a business to take reasonable steps to try and recover the money from the bank it was sent to. Santander did try to recover the funds Miss G sent to the receiving bank – and were able to evidence that they had contacted the bank within less than an hour of Miss G reporting the scam. The receiving bank got in touch to say they had secured the remaining funds which were returned to Miss G. They were able to recover £5.76 from the receiving account. So, I don't think Santander could have done more to recover Miss G's losses from the receiving bank here.*

...

***My provisional decision***

*My provisional decision is that Miss G should fairly and reasonably have all her remaining losses refunded to her plus interest.*

***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.*

*Miss G's representatives responded to say they accepted my provisional findings. Santander did not respond to my provisional decision. So, as neither party has given me any new information to consider, my decision is as outlined above in the extract from my provisional decision. I think that Santander have not shown that any exceptions to a full refund under the CRM Code was due to Miss G. So Santander should have refunded Miss G in full under the CRM Code.*

### *Putting things right*

Santander should have refunded Miss G in full under the CRM Code, and as such if nothing changes I will be asking them to:

- Refund any remaining losses Miss G suffered as a result of the scam
- Pay 8% simple interest on those remaining losses, from the date that her claim was declined (in part) under the Code.

### **My final decision**

My final decision is that I uphold this complaint and require Santander to refund Miss G's remaining losses plus interest, as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 17 January 2024.

Katherine Jones  
**Ombudsman**