

The complaint

Mr B complains that Santander UK Plc won't refund the money he lost when he fell victim to an Authorised Push Payment (APP) scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary I understand it to be as follows.

Mr B has said that on 29 November 2022 he received a call from somebody claiming to be from Santander, explaining that his account had been compromised. The caller told Mr B that they could see activity happening on his account and that he needed to transfer funds out of his account immediately.

Believing the caller to be legitimate, Mr B went ahead and followed their instructions in making the following three payments, totalling £7,200.01, to account details he was given;

29 November 2022	£2,900.01
29 November 2022	£2,500.00
29 November 2022	£1,800.00

But unknown to Mr B at the time he was speaking to a fraudster and had sent these payments to an account that the fraudster controlled.

Mr B realised he'd been scammed when he didn't receive a call back from the fraudster, that he had been expecting, so he reported the matter to Santander. Santander is a signatory of the Lending Standards Board Contingent Reimbursement Model (the CRM code) which requires firms to reimburse customers who have been the victims of APP scams like this, except in limited circumstances.

Santander issued its final decision and upheld Mr B's complaint in part. In summary, it didn't consider it had met its standards under the CRM code – to detect and prevent the scam. But it added that it didn't think Mr B had done everything to protect himself and he didn't complete any checks to verify the call he had received was genuine. As a result it offered to refund 50% of the money that Mr B had lost.

Santander also contacted the beneficiary bank (the bank to which the payments were made), but unfortunately no funds remained.

Unhappy with Santander's response Mr B brought his complaint to this service. One of our Investigator's looked into things and agreed with the outcome that Santander had come to under the CRM code, that both Mr B and Santander should each be 50% liable. In summary she thought there was enough going on that should have concerned Mr B and led to him taking further steps before making the payments.

Mr B disagreed with our Investigator's view. As agreement couldn't be reached the complaint has been passed to me for a final decision.

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 at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make. There's no dispute that Mr B authorised the payments that are the subject of this complaint, even though he did so as a result of being deceived by fraudsters.

This being the case and broadly speaking, under the account terms and conditions and the Payment Service Regulations 2017, he would normally be liable for the payments. But that isn't the end of the story. Where a customer has been the victim of a scam it may be appropriate for the bank to reimburse the customer, even though the payment has been properly authorised. Of particular relevance is the CRM Code which, as mentioned above, Santander has signed up to. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mr B.

As I've mentioned above, the CRM Code provides additional protection for the victims of APP scams. I'm satisfied that the payment Mr B made falls within the scope of the CRM Code. But despite offering additional protections, the CRM Code includes provisions allowing a firm not to reimburse APP scam losses fully where the firm can establish that the customer failed to take sufficient care when making the payment (often referred to as the exceptions to reimbursement).

One such circumstance might be when a customer has ignored what the CRM Code refers to as an 'effective warning'. Santander has already acknowledged it could have done more, it has acknowledged it didn't provide an effective warning. That's why it's refunded 50% of Mr B's loss, accepting that it ought to have done more and recognising that means it bears some responsibility for Mr B's loss.

But I have only found that Santander is partly liable for Mr B's losses and it doesn't need to provide a full refund. I'm persuaded Santander can rely on an exemption not to refund in full if Mr B didn't have a reasonable basis for believing the person he was dealing with was legitimate. I say that as I agree with our Investigator that there were factors about the scam which I think ought to have been red flags to Mr B;

- Mr B said the caller knew he held an account with Santander and about his previous employment. But I don't think this alone, was enough for Mr B to have reasonably believed he was speaking with his bank and to follow the instructions they gave thereafter. The caller doesn't appear to have carried out any security checks with Mr B, which you would typically expect if receiving a call from your bank.
- I'm mindful Mr B was unable to identify the number that was calling him through his mobile device. But Mr B didn't do any checks to identify the caller and took what he was being told at face value.
- Mr B also would have received the notification that the account name he was paying didn't match and this ought to have been concerning. As I would reasonably have expected Mr B to have believed that he was paying an account in his own name or an account that was clearly associated with Santander. But Mr B was sending a payment to a different bank, with no explanation as to why.
- Alongside this, if Mr B's money wasn't safe it's not clear why he needed to make multiple transfers, rather than one single payment. Mr B also recalls being told to

select 'paying a friend' for the payment purpose, but doesn't appear to have been given an explanation for this.

I'm mindful that, taking any of the individual factors above in isolation, they may not have been enough to have prevented Mr B from proceeding. But when considering the specific circumstances of this case and the factors in the round, on balance, I think that there was enough going on and sufficient red flags that Mr B ought reasonably to have taken further steps to protect himself. In not carrying out sufficient checks I don't find he had a reasonable basis for believing he was making payments for a legitimate purpose. So this leads me to conclude that Mr B is also partly liable for his losses.

I've considered whether Santander did all it could to try and recover the money Mr B lost, once he had reported the scam to it. Santander did contact the receiving bank when he raised the matter, but unfortunately the receiving bank told it that no funds remained. So I think Santander has done what could reasonably have been expected of it to try to recover the money.

It's very unfortunate Mr B has lost this money in this way, and I understand the whole experience has been deeply upsetting and I have a great deal of sympathy for him. But in the circumstances, I don't think I can fairly or reasonably say Santander should refund Mr B any more of the money he sadly lost.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 October 2023.

Stephen Wise
Ombudsman