

## **The complaint**

Mrs O complains that Santander UK Plc won't refund all the money she lost when she was the victim of a scam.

## **What happened**

In December 2022, Mrs O received a phone call from someone claiming to be from Santander's fraud department. The caller asked her if she had made two recent payments out of her account and, when she said she hadn't, they said her account wasn't secure and so she needed to move her money to a new account to keep it safe.

Mrs O says the caller then talked her through setting up a new account and gave her the bank details to send her money to. And Mrs O made a number of payments out of her Santander account to the bank details the caller gave her, totalling £23,600.

Unfortunately, we now know the caller was a scammer.

After the scam was uncovered, Mrs O reported the payments to Santander and asked it to refund the money she had lost. Santander investigated and accepted that its fraud prevention systems had failed to highlight the payments. But it also said Mrs O hadn't done relevant checks before making the payments and hadn't followed the advice and warnings it had given her. So it offered to refund 50% of the money she had lost. Santander also later managed to recover an additional £5,126.28 from the bank the money was sent to. Mrs O 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 Mrs O had a reasonable basis for believing the call was genuine, following the warnings Santander had given her. So they thought Santander's offer to refund 50% of the money she had lost was fair and they didn't think it should have to do anything further. Mrs O disagreed with our investigator as she felt Santander should have to refund all the money she lost, 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 Mrs O 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.

*Did Mrs O have a reasonable basis for belief when making the payment?*

Santander has said Mrs O didn't have a reasonable basis for belief when she made the payment, because she didn't do sufficient checks into who she was speaking to or sending the money to and because it had warned her about this type of scam when it spoke to her the previous day. And while I appreciate that Mrs O has been the victim of a cruel scam, I do think there were a number of things about what was happening and what she was being told that should have caused her significant concern.

Mrs O had received a scam email the previous day saying she owed money to a government agency. And when she called to report it, Santander gave her warnings about what the scammers could try to do next and advice on what she should do to protect herself. Santander told her the scammers might try to contact her saying they were from Santander, or another bank, so to be extra careful as they may try to get money from her that way. It said no genuine company really does phone calls anymore, so if anyone did contact her she shouldn't get into a conversation with them and should just hang up. And it said to be extra vigilant with her account and, if there was anything she was unsure about, to give it a call.

So, as the phone call she received the following day was very similar to what Santander told her the scammers might try to do next, I think this should have caused Mrs O significant concern about whether what the caller was telling her was true.

Mrs O was also asked to send the money to what appears to be a personal account in the name of someone she didn't know. And the caller said they had ordered a new card for her, but when she spoke to Santander the previous day, it told her it couldn't order a new card for her as her address had recently been changed. So I think these things should also have caused her some concern.

I sympathise with the position Mrs O has found herself in. But I think there were a number of things here which should have caused her significant concern, and I don't think she did enough to satisfy those concerns before making the payment. So I think Santander has established that she 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 Mrs O all the money she lost.

*Did Santander meet its obligations under the CRM code?*

Even though I don't think Mrs O had a reasonable basis for belief when making the payments, she may still be entitled to a refund of some of the money she 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 Mrs O when she made these payments, as it should have done. And so has accepted that it didn't meet its obligations under the CRM code.

Overall then, I think Santander has established that Mrs O 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 Mrs O is entitled to a refund of 50% of the money she lost.

As Santander has already offered to refund 50% of the money Mrs O 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 Mrs O 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 £5,126.28, which has now been returned to Mrs O.

### **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 Mrs O to accept or reject my decision before 8 December 2023.

Alan Millward  
**Ombudsman**