

The complaint

A, a limited company, complains that Santander hasn't refunded the money it lost when its director fell victim to a scam in 2022. Mr S, director of A brings this complaint on A's behalf. As Mr S made the relevant payments, in what follows I will predominantly be referring to him.

What happened

The circumstances of this complaint are well known to both parties, and I will therefore restrict myself to a brief recap of the key elements. Likewise, in what follows I will focus on those elements I consider most relevant to the outcome at hand. In saying this though, I would like to assure Mr S and Santander that I have taken everything into consideration even if I have not specifically commented on it. The rules of this service permit me to do this.

In mid-2022, Mr S had posted online looking for work opportunities in the context of his role with A. He was contacted by email with a job offer working at a hospital in Dubai. It included details of a company (which I will refer to as O) that would supposedly be handling the immigration services.

Mr S was keen on the offer. He forwarded the offer email to someone he trusted who worked in a UK based recruitment consultancy. They said they'd never worked with the hospital or with O so couldn't comment. They said it looked genuine but said he should check reviews and speak with someone directly to be sure.

Mr S was told he'd need to pay upfront for the application process. He sent a payment from A's business account for the sum of £2,790 on 29 August 2022. Additional money was then requested. Mr S was told this was needed to cover the cost of insurance, visa costs and the creation of a bank account. He sent three further payments from A's account between 29 September and 31 October.

Across all these disputed payments, Mr S sent a total of £15,238 from A's account. These payments had all been made by bank transfer to a UK account. Unfortunately, neither the hospital nor the bank that Mr S believed he'd been dealing with existed in reality. When Mr S later travelled out to Dubai, he realised he'd been deceived.

In December 2022, Mr S reported the matter to Santander as having been fraudulent – an Authorised Push Payment scam (APP scam). Santander attempted to recover the money he'd sent, but no funds remained to be retrieved.

Santander is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code) which can offer additional protection from APP scams. Santander said it wouldn't refund A in full because it didn't think Mr S had taken enough steps to check he was paying a legitimate company for a legitimate service. But Santander thought it could have done more to protect A, and said it would refund 50% of the amount paid.

Mr S didn't accept this. One of Investigators looked into what had happened. She didn't think Santander needed to pay more than it had already. She considered Mr S had made the payments without having held a reasonable basis for believing that the transactions were

legitimate. In particular she highlighted that an online search for the hospital showed no results, except for an article from 2018 referring to a similar scam. Similarly, a search for O readily generated results indicating the company was fraudulent, describing again the same scam Mr S had fallen victim to. Finally, the bank Mr S believed he'd opened an account with had no online presence or reviews.

Mr S didn't agree – he said that at the time of the scam the three businesses involved had fake websites which had now been taken down. But the Investigator didn't think this changed things.

In light of this disagreement, I have been asked to reach a final decision on the matter.

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 deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In law, Santander has as a primary obligation to carry out the payment instructions its customers give it in accordance with the payment mandate. As a starting point, a customer is therefore assumed liable for a payment they have instructed to be made.

But that isn't the end of the story. In particular, as I've mentioned earlier, the voluntary CRM Code can provide additional protection where payments have been made as the result of an APP scam. Santander hasn't disputed that the additional protections of the CRM Code should apply here. Under the terms of the CRM Code, the bank has reimbursed A half of the money Mr S sent from its account.

Santander accepts partial fault, but it considers Mr S must equally share responsibility for the loss. So, what remains for me to determine is whether that is a fair outcome or if, on the contrary, Santander can fairly be required to repay the remaining balance.

The CRM Code won't always require a firm to refund payments in full. In particular, it says a firm can choose not to fully reimburse APP scam losses where the firm can establish that the customer made the transactions without having a reasonable basis for believing what they did - including that they were paying for a legitimate service. Santander seeks to rely on that here.

When considering if Santander has treated Mr S fairly in line with the CRM Code, I therefore must consider whether Mr S made the payments without having a reasonable basis for believing this was for legitimate purposes. I have carefully considered everything Mr S has submitted as well as the evidence submitted by the bank.

There were some features here that I consider would have made the scam seem more believable. Mr S had received an email following an online posting he'd made, meaning the contact wasn't completely unsolicited. He explains that the businesses involved had fake websites, and while these are not available now to me to view, I accept that seeing them helped Mr S to believe the businesses were real. And this was a relatively complex scam, with a number of different parties interacting with Mr S and working to deceive him.

But there were factors I think should have caused Mr S to have significant doubts about what

was happening. On balance, I consider these were significant red flags that reasonably should have stopped him from going ahead, and from making the payments he ultimately made.

Firstly, while I appreciate Mr S had emailed someone he trusted for advice, that person asked him at the outset whether he'd looked for reviews of the hospital – she hadn't heard of it. Nothing in that correspondence would reasonably lead to the conclusion she'd carried out any research on Mr S's behalf – rather she suggested Mr S should take those additional steps.

Had Mr S carried out searches online for reviews or external validation of the businesses he believed he was dealing with then I am satisfied he would have found the online reports of similar scams linked to both the hospital and to O. And I don't find he could reasonably have gone ahead if he had seen those – this would have alerted him to the scam that was occurring.

In short, I think even that basic level of checking would have been sufficient to stop Mr S from proceeding any further. I don't find it reasonable to have relied simply on the organisations' own websites without carrying out such further checks to validate the information those websites contained. This was a significant step Mr S was considering, and he was applying for a role at a hospital overseas that he presumably had no prior knowledge of (and which his trusted consultant had never dealt with). Nothing I have seen suggests that Mr S was unable or somehow prevented from carrying out additional checks, and he had been prompted to look for reviews by the person he asked for advice.

I appreciate that Mr S was keen to take on the job opportunity. The remuneration and terms on offer were doubtless appealing. But I'm not persuaded that he researched the matter at all thoroughly. The evidence simply doesn't support me reaching such a finding.

Mr S refers to the visit he made to Dubai. But that occurred after he'd sent the payments now being disputed. What matters here is his basis for believing what he did at the time he made these payments – and what happened later does not have a bearing on that.

Having reviewed everything, I am not satisfied that Mr S could be safely said to have had a reasonable basis for believing the service being offered was legitimate at the time these payments were made.

I've considered the evidence here thoroughly including everything Mr S has said. But overall, I'm satisfied that Santander has fairly established that the exception to full reimbursement under the CRM Code can be applied to Mr S's payments from A's account.

Would Santander be liable to pay a higher award outside the CRM Code?

The CRM Code is a voluntary code that exists to provide additional protection where it is relevant. Mr S queries whether he would be entitled to more compensation if the CRM Code did not apply.

The CRM Code doesn't represent the full extent of obligations on Santander in relation to payments being made from an account – it exists specifically to provide additional protections to scam victims beyond those other obligations. So, ordinarily, that means greater protection is normally available under the terms of the code than outside its provisions. Nevertheless, I have carefully considered whether there are any other reasons here that might make Santander liable to a greater extent than the 50% it has already reimbursed.

As noted earlier the primary obligation Santander had here, was to carry out the payment instruction Mr S gave (which it did).

I have taken account of Mr S's question about whether Santander has a legal liability to return the money he sent to this scam. When Santander learned that Mr S had made those payments as the result of fraud it did attempt to recover his money, but that had already been removed. I do not find it needed to do more here or that it fell short of regulatory obligations or legal liabilities in that respect.

Mr S also refers to an account he holds with an e-money provider, offering a buyer protection scheme. He explains he has received a refund from that provider in relation to another payment or payments. However, I cannot apply the terms of a proprietary buyer protection scheme to payments made from a business bank account held with another firm. Here I must consider what is applicable to A's account with Santander, and that is how I must reach my finding – I cannot fairly require Santander to follow a buyer protection scheme that isn't in the terms of the account it provides.

Nothing I have seen leads me to find Santander was otherwise at fault in relation to the rules and obligations applicable. And even if that wasn't the case, and I instead found Santander at fault outside the terms of the CRM Code then I don't consider the circumstances here could fairly and reasonably lead me to award a higher sum than has been returned to A already.

Rather, I consider that, in reaching a fair outcome, I would need to reduce any such award to reflect contributory negligence (for reasons that are broadly similar to those I have set out above regarding having had reasonable basis of belief at the time of making the payments). And given the circumstances applying here, I consider that would lead me to find it both fair and reasonable that the overall loss should still be borne equally between Santander and A.

In summary, were I to set the CRM Code's provisions to one side, I don't find I could fairly require Santander to refund A by more than the 50% it has already for any other reasons.

Overall

With all of the above in mind, and based on what I've seen, I don't consider that Santander needs to do more than it has already done, and it does not need to refund more than the 50% it already has paid to A. I am sorry to hear about the situation that arose here, and that Mr S and A have been left significantly out of pocket as a result of this scam. I understand that this is not the outcome Mr S wants. But I can reassure Mr S that I've carefully considered all the circumstances of his complaint before reaching what I consider to be the fair and reasonable decision in all of the circumstances.

My final decision

For the reasons given above, I do not uphold Mr A's complaint about Santander UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 11 October 2023.

Stephen Dickie
Ombudsman