

## **The complaint**

Mr S complains that Santander hasn't fully refunded him for the money he lost when he fell victim to a scam in 2022.

## **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 received a call from someone claiming to work for his internet provider (which I'll refer to as P). He was told the network had been experiencing technical difficulties and that this had caused him to receive poor quality service. Mr S was told that because of this he was due a refund of around £500.

Mr S was told that the caller was having trouble making the payment. He was told he'd need to send money to an account supposedly belonging to P. This would mean that P could pay him the refund he was due, and the caller said he'd be refunded for his own money.

Believing he was enabling P to refund him, Mr S made a payment by Faster Payments transfer from his Santander account, for £603. The caller told him it hadn't worked and to try again, this time sending £987. Being told this hadn't worked Mr S attempted a third payment, but this was blocked by Santander. Mr S says he then heard the caller laughing and realised that what he'd been asked to do wasn't legitimate.

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 Mr S in full because it didn't think he'd 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 Mr S and said it would refund half of the amount he'd paid.

Mr S didn't accept this. He referred his complaint to this service.

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.

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 Mr S half of the money he sent from his Santander account.

Santander accepts partial fault, but it considers Mr S must equally share responsibility for the loss. 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 a legitimate person for a genuine 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 at that time did use P for his internet service, and he explains he had noticed some problems with his connection. So the reason given for the call he received wasn't completely implausible.

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, I don't find the story he was given was plausible – that P could only refund him if he paid a large sum first. I think Mr S should have been concerned by what he was told. During the telephone call when he reported the scam to Santander, he comments that he knew this wasn't right.

Furthermore, the name of the account he was told to pay didn't have any obvious connection to P. Mr S said he queried this at the time but was reassured when he was told they'd pay him his money back.

I have taken into account what Mr S has explained about his circumstances. I appreciate that since the scam occurred his situation has worsened. I am sorry to hear about the impact these events have had on him, and I do not underestimate the effect of this crime on him.

But I need to consider the situation he was in at the time of the payments he made and whether he was able to have protected himself from the scam that occurred.

And based on what he said to the bank at the time of reporting the scam, I think that at that time, he was able to identify that what he had been asked to do wasn't right and had doubts about it at the time he was making the payments.

I think Mr S should have trusted his instincts here. So I find he was able to have protected himself from what happened. Having reviewed everything, I am not satisfied that Mr S had a reasonable basis for believing he was paying who he thought he was paying or that he was paying for a genuine service.

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.

The CRM Code is a voluntary code that exists to provide additional protection where it is relevant. But I've also thought about whether Santander should be held responsible for a higher amount outside the provisions of the CRM Code.

Santander followed Mr S's instructions when it made these payments, and I don't find there was a reason for it not to have done so – that was its primary obligation here. The payments weren't so unusual or remarkable in value or type that the bank ought to have suspected something might have been wrong.

And when the scam came to light, I'm satisfied that Santander acted appropriately in attempting to recover Mr S's money, but none remained by the point the scam had been uncovered. In short, the bank acted appropriately outside of the requirements of the CRM Code.

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 Mr S.

In saying this, I am sorry to hear about the situation that arose here, and that Mr S has 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 S's complaint about Santander UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 December 2023.

Stephen Dickie  
**Ombudsman**