

The complaint

Miss P complains that Santander UK Plc hasn't refunded her the money she lost after she fell victim to what she believes was a scam.

What happened

I issued my provisional decision on this complaint on 29 February 2024. The background and circumstances of the case and the reasons why I was minded to uphold the complaint in part were set out in that decision. I have reproduced the provisional decision in italics below:

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.

Miss P was contacted by someone, who I'll refer to as Mr A, after she'd posted a story on social media. Miss P has said she'd never met this person before, but knew of them through a distant friend. After exchanging some messages, Mr A told Miss P that he had a friend, who could get discounts at a clothes store and offered her a voucher. Miss P has said she declined the voucher. But later, Mr A told her that he knew somebody, who I'll refer to as Mr B, who worked in security and could secure discounts on items at a luxury department store.

Miss P initially sent payments to Mr B to purchase luxury items, including shoes, perfume, earrings and a bag. She then told a friend, who asked her to get a luxury watch. Miss P agreed and sent the money for this, but has said she was worried this could be a scam. She went to the department store, where she met with Mr A – she was told to wait downstairs, as he was only allowed to 'go to the back' to collect the items. Miss P received these items, but has said she was still suspicious this was a scam. She made arrangements to verify the authenticity of the items and found that they were genuine.

Mr A then told Miss P that he was friends with people who owned a luxury jewellers and asked her if she wanted to get in on an investment. It was proposed that Mr B would get the goods from the luxury department store at discounted prices and Mr A and Miss P could then sell them onto the jewellery company, at a marked-up price. Miss P has said she checked out the jewellers and could see it was genuine and due to her personal circumstances she was interested in investing.

Miss P went ahead and made multiple payments to buy various items of jewellery and received some returns. She's said Mr A was pressuring her to continue to invest, but she told him she didn't want to do any more deals and asked for some money back. Miss P has said she was told her money would be returned, but was then given excuses and has said Mr A became threatening and abusive.

Miss P then went to visit the address of the luxury jewellers. She showed the owners pictures of Mr A and Mr B, but the owners didn't recognise them.

Believing she'd been the victim of a scam, Miss P raised the matter with Santander. 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

Authorised Push Payment ('APP') scams, in all but a limited number of circumstances. It looked into Miss P's complaint and concluded it had no responsibility to refund her loss. In summary this was because it considered this to be a civil dispute between Miss P and the third parties.

Unhappy with Santander's response, Miss P then brought her complaint to this service. One of our Investigator's looked into it and didn't think the complaint should be upheld. In summary, it was our Investigator's view that Santander were fair to say this was a private civil dispute and therefore not covered by the CRM code. In summary, he said this because Miss P had received some items and some refunds on her payments. Alongside this she had met Mr A and he didn't consider what happened was the typical actions of a fraudster.

Miss P didn't agree with our Investigator's view, she maintained that she had been the victim of a scam and that Santander should refund her loss.

As agreement couldn't be reached the complaint has been passed to me for a decision.

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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm sorry to hear of what's happened to Miss P, and I can understand entirely why she feels so strongly that her money should be returned to her. I don't doubt that she has lost money and hasn't received what she was expecting. But I don't find that Santander has acted unfairly in declining Miss P's claim and deciding not to refund her loss. I'll explain why.

When considering what is fair and reasonable in this case, I've thought about the CRM code. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an Authorised Push Payment ("APP") scam.

In the circumstances of this case both the Bank and our Investigator consider what has happened to be a civil matter between Miss P and the third parties involved, and therefore not covered by the CRM Code.

It is finely balanced as to whether this is a civil dispute or whether the third parties set out with the intent to defraud Miss P. However, I'm mindful here that Miss P did receive goods, received some returns, met Mr A in person and has continued to receive money, even after raising the scam. None of these are typical hallmarks of these types of scam, which leads me to believe that what has happened here is more likely than not a civil matter between the parties involved.

But in any event, even if I was wrong about that and I was to consider that there was an intent from the outset to deceive Miss P, I'm not minded to say that Miss P would be entitled to a refund under the principles of the CRM code. The first question that needs to be considered is whether a claim is within the scope of the CRM code. In the individual circumstances of this complaint, I don't find that it is as it doesn't meet the definition of an APP scam.

The CRM Code defines an APP scam as:

Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

Miss P did make faster payments and they were properly authorised in accordance with regulation 67 of the Payment Services Regulations ('PSRs'). So that part of the definition is met. The issue arises in considering point (ii) of the definition. Here it says that the payment must have been made by the customer (Miss P) 'for what they believed were legitimate purposes'.

I'm not persuaded that Miss P was making payments for legitimate purposes and I'm minded to say that she ought to have recognised that. I don't doubt that Miss P genuinely expected the transactions (of buying jewellery and then selling it on at a profit) to go through, but I think there were clear indications that this arrangement wasn't above board.

I don't find it plausible that a luxury department store would allow its staff to utilise a staff concession to purchase high end luxury items and then sell them on for a profit. That's when taking things at face value, in accepting that Mr B even worked for the department store, at best, I think that's questionable. Miss P has also said she was told there was a direct relationship where the jewellery shop would receive the goods from the "security" at the department store. I'm not persuaded that any legitimate store would allow its staff to do this.

As well as this, when Miss P attended the department store to collect the goods, she wasn't able to see where Mr A went, was told to wait and the whole situation seems to me to have been clandestine. I think this is also supported by Miss P's own submissions, she's said she was worried it was a scam before she went to the store and still had her suspicions after. So Miss P's seems to have had her own doubts about whether things were all above board.

At best, I think it's clear that Mr B would have been abusing a position he claimed to be in and was employing deceitful means against his employer to secure goods for people for personal gain. I also haven't seen anything in the submissions, that would have provided Miss P with any persuasive evidence to support that purchases of the jewellery (or the luxury items before that) were being made legitimately.

Overall, I'm satisfied Miss P ought not to have thought she was making payments for a legitimate purpose, even if she had her own reasons and personal circumstances for doing so.

As I don't believe the circumstances here satisfy the definition of an APP scam, the payments made by Miss P don't fall within scope of the Code. And so Santander has acted fairly and reasonably in declining her claim, even if it might have offered different reasons for doing so. And I'm not persuaded there are any other reasons it ought to refund Miss P.

Miss P doesn't have to accept any of the findings in my decisions, and if she doesn't they won't be binding on her. Subject to any time limits or other restrictions a court might impose,

Miss P's right to pursue a legal remedy or a resolution through alternative means, won't have been prejudiced by our consideration of this complaint.

My provisional decision

For the reasons explained above I don't intend to uphold this complaint against Santander UK Plc.

In my provisional decision I asked both parties to send me any further evidence or arguments that they wanted me to consider by 14 March 2024.

Santander didn't respond to my provisional decision. Through her representatives, Miss P responded to say that she didn't want to be bound by it.

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.

Given Santander hasn't responded to my provisional decision and Miss P hasn't put forward any new arguments, I see no reason to depart from my provisional decision.

Miss P has said that she doesn't want to be bound by my decision. As I alluded to in my provisional decision, Miss P doesn't have to accept any of the findings in my final decision, and if she doesn't it won't be binding on her. Subject to any time limits or other restrictions a court might impose, Miss P's right to pursue a legal remedy or a resolution through alternative means, won't have been prejudiced by our consideration of this complaint.

My final decision

My final decision is that I don't uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 12 April 2024.

Stephen Wise
Ombudsman