

## **The complaint**

Mr and Mrs C complain that Santander UK Plc won't refund the money they lost when they were the victims of a scam.

## **What happened**

In January 2023, Mr and Mrs C were looking to buy some firewood. Their previous suppliers could only deliver to them in a couple of weeks, but Mr and Mrs C then came across an advert for a company selling firewood on a social media platform. They contacted the company, who said they could deliver to them the following day. So Mr and Mrs C agreed to buy some firewood from the company and sent a payment of £130 from their Santander account to the bank account details the company gave them.

Unfortunately, the company didn't deliver the firewood to Mr and Mrs C when it agreed and ultimately stopped responding to their messages. So Mr and Mrs C reported the payment to Santander as a scam.

Santander investigated but said it had done all it was required to do by providing warnings to Mr and Mrs C before they made the payment. It also said Mr and Mrs C could have done more to protect themselves from the scam, by doing more checks into who they were paying. So it didn't agree to refund the money they lost. Mr and Mrs C weren't satisfied with Santander's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought Mr and Mrs C should have had concerns about the payment, so weren't entitled to a refund. They also thought Santander's process for cancelling a payment was adequate and that it didn't have to do anything further to refund the money Mr and Mrs C had lost. Mr and Mrs C disagreed with our investigator, 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.

### ***Does Santander have to refund the money Mr and Mrs C lost?***

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 Mr and Mrs C 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.

Santander has argued that Mr and Mrs C didn't have a reasonable basis for belief when making the payment, because they didn't do enough to check who they were paying. And while I appreciate that they have been the victims of a cruel scam, I do think there were a number of things about what was happening and what they were told that should have caused them significant concern.

Mr and Mrs C haven't been able to send us copies of any of their communication with the scam company. But it appears all their communication with them was through a social media platform, which isn't how I would necessarily expect a genuine company to communicate with customers. Mr and Mrs C also don't appear to have been sent an invoice or receipt for their payment, or any confirmation of the purchase they were making – which I would expect a genuine company to provide.

Mr and Mrs C also don't appear to have been given the option, or asked, to pay for the purchase using more secure payment methods, like a debit or credit card. But I'd expect a genuine limited company, like the one they thought they were paying, to take payments in this way. And Mr and Mrs C were asked to make the payment to the personal account of a person they didn't know, rather than a business account for the company they thought they were buying from. And they don't appear to have been given any explanation for who the person was or how they were connected to the company. But this isn't how I would expect a genuine company to ask for payment.

I sympathise with the position they have found themselves in. But I think there were a number of things here which should have caused them significant concern. And Mr and Mrs C appear to have had concerns of their own as well, as they tried to delay the payment rather than make it immediately. But they only delayed the payment by around an hour, so I don't think the steps they took were enough to overcome the concerns they appear to have had. And I don't think the seemingly genuine information they saw about the company should have been enough to overcome the concerns I think they should have had.

So I think Santander has established that Mr and Mrs C 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 Mr and Mrs C all the money they lost.

Even though I don't think they had a reasonable basis for belief when making the payment, Mr and Mrs C may still be entitled to a refund of some of the money they 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.

But the payment Mr and Mrs C made wasn't for a particularly large amount. It didn't leave the balance of their account at a particularly unusual level. And Mr and Mrs C had made

similar types of payment out of their account for similar and larger amounts in the months before the payment. So I don't think Santander should have identified a scam risk as a result of this payment, or that it was required to provide Mr and Mrs C with an effective warning here. And so I don't think it has failed to meet its obligations under the CRM code by failing to do so.

I therefore don't think Santander is required to refund the money Mr and Mrs C lost as a result of this scam.

*Should Santander have allowed Mr and Mrs C to cancel the payment?*

Mr and Mrs C have argued that Santander should have allowed them to cancel the payment after they had set it up. They say they delayed the payment and then wanted to cancel it before it was actually made and so, if they had been able to cancel it, they wouldn't have lost the money they did. They feel Santander's processes for cancelling payments are inadequate.

Santander has said pending payments can be cancelled through its online banking system. But it's also sent us evidence of a warning shown on that system which says that if it receives a request to cancel a payment after 5:30pm or on a non-working day, it will normally cancel the payment by 9am the following day.

The Financial Ombudsman Service doesn't have the power to require businesses to implement certain processes or procedures, so I can't require Santander to allow payments to be cancelled immediately or 24 hours a day, as Mr and Mrs C have suggested. And as Mr and Mrs C only delayed the payment by around an hour, and did so entirely outside of usual working hours, I don't think it's unreasonable that they then weren't able to cancel the payment before it was made.

*Customer Service*

Mr and Mrs C have also mentioned that they don't think Santander did enough to help them when they were trying to cancel the payment or report the payment as a possible scam.

As I explained above, I can't require Santander to answer phone calls 24 hours a day. And I don't think it's unreasonable that its general phone line only operates during certain hours of the day. I appreciate Mr and Mrs C say they weren't told about the 24-hour fraud helpline, either by Santander's chat system or the recorded message they received when they called the general phone line. But the number for the fraud helpline is available on Santander's website, which Mr and Mrs C had used to make the payment, so I don't think they were prevented from finding it. And at that point the company they'd paid hadn't been due to deliver the firewood yet, so it wasn't clear if there had been a scam.

So, while Mr and Mrs C could have been given clearer information about the fraud helpline, I don't think the level of customer service Santander provided them was unreasonable or below the standard we would expect. I also don't think more information about the fraud helpline would necessarily have stopped Mr and Mrs C losing the money they did. And so I don't think it would be fair to require Santander to pay any compensation for the level of customer service it provided them.

Mr and Mrs C have also said Santander should have told them that the bank the payment was being sent to wasn't signed up to the CRM code. But there isn't any requirement on Santander to do this. So I don't think it would be fair to say Santander had made an error in not doing so.

## *Recovery*

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 while unfortunately the bank the money was sent to wasn't able to return any of the money, Santander has done all I would expect it to have done and I don't think it would be reasonable to require it to do anything further.

## **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 Mr and Mrs C to accept or reject my decision before 2 February 2024.

Alan Millward  
**Ombudsman**