

The complaint

Mr and Mrs R are unhappy because Santander UK Plc (Santander) did not reimburse the money they transferred to a fraudster.

What happened

Mr and Mrs R were in the process of buying an apartment abroad for their daughter. Mr R's daughter was in regular contact with her appointed solicitor. The seller of the apartment was British and had a British bank account, so an agreement was reached to pay completion funds in to the seller's UK bank account to avoid paying for the apartment in euros and converting to sterling. The deposit had been paid in euros.

At the end of November 2019 Mr and Mrs R's daughter received an email she thought her solicitor abroad had sent. She now knows the email was sent by a scammer. The email was in response to an email Mr and Mrs R's daughter had sent asking when the completion funds were due. The email said there had been a development and asked if the transfer could be made that week. This meant paying the balance for the apartment around a week earlier than previously agreed. After checking the position in respect of tax clearance and agreeing that she would receive the keys to the apartment when the funds were transferred Mr and Mrs R's daughter agreed to make the payment early.

The scammer provided emails which appeared to be from the seller's solicitor confirming the request to bring forward the completion date. Mr and Mrs R's daughter was also provided with payment details for a UK bank account. Mr R was with his daughter abroad when she received the payment request. As he was making the payment for his daughter, he decided to initially make a test payment of £50 by mobile banking to check the funds were going to the right account. Mr R says he often did this when he made larger payments. Soon after Mr and Mrs R's daughter received email confirmation the payment had been received and so Mr R called Santander to make the remaining payment of £69,515 to the same account details as previously.

In his first call to Santander Mr R explained he was buying a property abroad and had already made a payment of £50 which he thought would make it easier to make the next payment. The adviser explained that it was really important to find out the reason for the payment so that Santander could offer the right support. She went on to say,

"If you've received an invoice, bank account or payment details by email, this could be a scam. Criminals can hack email accounts or spoof email addresses to redirect funds to fraudulent accounts for large purchases such as this. We suggest you always check the payment details by phone or in person before you transfer. Are you comfortable with this new payment?"

Mr R confirmed that he was comfortable with the payment. The advisor explained to Mr R that as the payment was for a large amount, he'd receive a call back to process it. Mr R then received a call from Santander's fraud department. I have set out below relevant parts of this call:

Santander: I know my colleague will have gone over this with you anyway but the reason sometimes you have to go through this process is we've seen a rise in scams also a rise in fraud so sometimes just need to make sure everything's OK. Erm, not to be intrusive not to sort of put a hiccup in your day or anything like that it's just to make sure that with larger amounts like this once a payment's been made you see it cannot be cancelled, recalled or amended so if it's done right first time...So the payment itself if you don't mind me asking, what would the payment be for?

Mr R: It's to purchase an apartment and the address is actually [address]

Santander: Right, OK, excellent. And the apartment itself, you've been to the location, have you seen it are you happy with what you would be purchasing?

Mr R: Yes, everything's been done through solicitors in [name of country] and it's just the lady lives in the UK, I've got the money in the UK so to save transferring to euros and then back to pounds we're just doing it direct to her, so all this has gone through solicitors today.

Santander: Right, OK, excellent. Erm, it is just sometimes like with property or with cars people purchase it without seeing it which is always a little bit dangerous, but if you know the apartment, you've seen it and you're happy with it. You've got no reservations whatsoever in relation to this?

Mr R: None at all, no

Santander: OK, and it's not someone you've just recently met or anything like that? Apart from the fact it would be...

Mr R: No it's through an estate agent and it's been going on for about the last six or eight weeks.

Santander: Right, OK. That is fine. As I said earlier the reason we do it is just to make sure nothing's happening because we know people can be tricked in to making a payment or sometimes can get forced in to doing it or they get told what to say to us on the phone. So nothing like that's happening with yourself?

Mr R: Nope, not at all. Nothing at all.

...

Santander: The reason I ask these questions is just to make sure everything's present and correct because as I've said earlier once it's been made it cannot be cancelled, recalled or amended so prevention's better than cure.

Mr R: I totally agree

Santander: So we're just getting this sorted out for you now. What I'm going to do is make this payment....The system's just prompted me to ask a couple more questions to be honest with you. I think I've got most of them anyway but I'll just do it anyway, so have you been contacted by anyone claiming to be from the bank, police or anyone else and asking to move money?

Mr R: No

Santander: Have you been contacted by email, fax or invoice and asked to make a payment?

Mr R: N

Santander: Have you been cold called and offered any investment products?

Mr R: No

Santander: Have you been asked to make a payment by someone who you've just recently met?

Mr R: No

Santander: OK, that is no problem. As I say I pretty much covered all of that anyway didn't I but it just came up to ask them so I've just done that.

Mr R: I mean I know these are normally recorded I'm more than happy with the security, I haven't got a problem with that

Mr R made the payment on 28 November 2019. When he hadn't received confirmation that his second payment had been received by the following morning, he contacted the estate agent abroad. The estate agent knew nothing about the payment and told Mr R he'd been the victim of a scam, so Mr R contacted Santander to report it.

What Santander say

Santander were able to recover £3.20 from the receiving bank but didn't agree to refund Mr and Mrs R's losses. It said it provided effective warnings both online and in two telephone conversations and advised Mr R to check the details by phone or in person, but he chose not to do so. Santander also said that it relies on customers answering their questions correctly. Mr R said he hadn't received the invoice by email and so Santander didn't provide any additional advice about email intercept scams. Santander say that Mr R was twice advised that emails can be hacked or spoofed and to check the details before payment so even if further advice had been given in the second call Mr R would have gone ahead with the payment anyway.

Santander paid Mr R £75 to reflect the fact he didn't receive calls when expected.

My provisional decision

I issued my provisional decision on 15 July 2021. In my provisional findings section I said:

I've considered all the evidence and arguments to decide what is fair and reasonable in all the circumstances of the complaint. Having done so, I am satisfied that:

- *Under the terms of the CRM Code, Santander should have refunded the money Mr and Mrs R lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.*
- *Santander should in any event have intervened when the second payment of £69,515 was made as the payment was unusual and out of character for Mr and Mrs R and if it had done so, I am satisfied the fraud would have come to light and the loss prevented.*
- *In the circumstances Santander should fairly and reasonably refund the money Mr and Mrs R lost.*

- *Mr and Mrs R have been deprived of the funds and the opportunity to purchase the property. It's clear they would have used the funds as a final payment for the property had the scam not happened. So, I think it's fair and reasonable that they should be awarded 8% simple interest per year on the funds they lost. In respect of the initial payment of £50 the interest should run from the date Santander declined their claim under the Code to the date of settlement. Interest on the balance should run from the date of loss to the date of settlement.*

I have carefully considered Santander's representations about the warnings it gave. But they do not persuade me to reach a different view. In particular, I'm not persuaded that Mr and Mrs R failed to take the requisite level of care required for Santander to choose not to reimburse under the terms of the CRM Code.

In this case I'm satisfied that the requirements of the effective warning exception were not met and will explain why.

Online payment warning

When Mr R made the first £50 payment he selected the payment reason as "Property or large purchase" and was provided with the following mini-warning,

"If you received an invoice or bank account details by email, this could be a scam".

Underneath this was a "Continue" button and on the next screen a full warning was displayed as follows,

"Could this be a payment redirection scam?

Criminals often attempt to intercept emails and send you false bank account details. These emails often look genuine. Please take a minute to double-check the payment details by phone or in person – this could save your money from being lost or stolen.

If you're at all nervous, or you've been told to use this payment reason, please cancel and call us now."

Mr R has told this service that he recalls seeing the mini warning, but not the full warning. He explained that the emails requesting payment looked like they came from a genuine address, so he wasn't concerned when he saw the warning.

To meet the requirements in the Code of an Effective Warning it must, as a minimum, be understandable, clear, impactful, timely and specific. I don't consider the warning met all of these requirements.

The bold heading is clearly meant to draw attention to the warning, but I'm not persuaded the average customer would know what a payment redirection scam is and so wouldn't understand what they were being asked. So there's a real risk a customer would move forward without reading the remainder of the warning. Even if a customer were to read the wording beneath the heading, it says the emails can 'look genuine'. I don't think this description goes far enough to explain just how sophisticated this type of fraud can be. For example, it doesn't explain that a fraudster is able to send emails from the genuine sender's email address or that these emails can be embedded in a legitimate email chain – as a result I don't think the risk is made clear enough and the warning therefore lacks impact.

The warning also contains a sentence in bold at the end which again, is presumably intended to grab the customer's attention but in doing so a customer might think they should feel nervous if this is a scam – in fact, most customers affected by this scam do not feel nervous as they are expecting to make a payment and often everything looks legitimate.

Overall, I consider the warning isn't clear and lacks impact. In the circumstances I consider Mr R acted reasonably in continuing to make the first payment of £50 and that he didn't ignore an effective warning.

Warning provided in Mr R's first call to Santander

After Mr R had confirmed the reason for the payment of £69,515 he was provided with the following warning:

"If you've received an invoice, bank account or payment details by email, this could be a scam. Criminals can hack email accounts or spoof email addresses to redirect funds to fraudulent accounts for large purchases such as this. We suggest you always check the payment details by phone or in person before you transfer. Are you comfortable with this new payment?"

I'm not persuaded the warning given to Mr R was as impactful. In reaching this conclusion I'm mindful that:

- *the Santander adviser only suggested that he contact the solicitor abroad. While I appreciate a bank can't force a customer to take additional steps, by suggesting a course of action in my view Santander put forward an idea for consideration rather than making it clear that the only way a customer could protect themselves from this type of scam was to call the solicitor. I don't consider "suggest" is a strong enough word to use to enable a customer, or Mr R, to recognise the risk.*
- *The warning didn't sufficiently bring to life what a scam of this nature looks like or the sophisticated nature of the scam – such as that a fraudster is able to convincingly impersonate a recognised contact (such as a solicitor) by intercepting a chain of emails, or sending an email from an email address which is the same as, or almost identical to, the genuine email address. While the warning does explain fraudsters can spoof email addresses, I'm not persuaded the average customer would understand the scam risk identified to be as sophisticated as I've described.*

Even were I to have found the warning met the requirements of an effective warning under the CRM Code, I still don't consider the exception should apply to Mr R. Had the warning met the effective warning requirements, Santander would need to establish that Mr R had failed to take appropriate action in response – or in other words that Mr R failed to act reasonably in response to the warning. I'm not persuaded Santander has established this.

I say this because by the time Mr R received the verbal warning in the call, he'd already received the account details from his daughter and made a £50 payment. He thought his daughter's solicitor had confirmed receipt of this payment so he didn't appreciate the warning Santander provided could also apply to the payment he'd already made. As the account details for the larger payment of £69,515 were exactly the same as when he made the £50 payment, Mr R believed they were correct. Given the reassurance he felt as a result of making the initial payment, and taking into account some of the shortcomings of the warning as I've set out above, I'm satisfied Mr R believed he had no reason to check the payment details.

And I'm mindful Mr R told the Santander call handler he'd already made a payment of £50 to the solicitor and he hoped that'd make things easier – presumably because the larger payment would now be going to an existing payee. In my view there was a real opportunity here for Santander to ask him some bespoke questions about this to establish how he'd checked this payment had been received by the solicitor. Instead Santander relied on a

script which meant for the most part that there were no bespoke questions asked, and based on the content of the discussion it would seem as though Santander also took some comfort from the fact Mr R's previous payment of £50 had been received by the solicitor without considering the fact a fraudster might've confirmed receipt. The call had a tone of 'going through the motions'. So overall, for the reasons I've explained, even if the warning was effective, I'm not persuaded Mr R failed to take appropriate action in response to it.

Second phone call with Santander's fraud department

Despite having confirmed the payment reason with Mr R, most of this phone call provided warnings and asked questions relating to completely different scams. Mr R has explained that he thought the purpose of the call was to confirm it was him who was making the call rather than someone impersonating him, and he didn't realise that the aim was to check the payment details were genuine.

In the call Mr R was asked a series of questions about the reason for the payment and to identify common types of scam. The question most relevant to the scam Mr R was affected by was:

"Have you been contacted by email, fax or invoice and asked to make a payment?"

I understand why Santander asked this question but there is no context and no link to a specific type of scam to help the customer to understand the reason for the question and the importance of it. The words, "and asked to make a payment" could also lead a customer to believe they were being asked about an unexpected payment request, particularly given the context of the other questions that were asked.

Mr R can't recall giving a negative response but has explained that it may be because it was his daughter that had received the email and they were both satisfied at the time the details were genuine, or as explained above, it might be because Mr R didn't think the question was relevant to his circumstances. So in the circumstances of this case I think it's understandable Mr R answered as he did and didn't appreciate the importance of the question. In any event, the Santander advisor knew Mr R was buying a property abroad and so receiving account details by email was likely. But he didn't ask Mr R how he received the account details. Had he have done so I see no reason why Mr R wouldn't have explained that his daughter received the payment details by email, and he was with her at the time.

Overall, I don't think any of the warnings given were impactful or went far enough to be effective. And I'm persuaded Mr R acted reasonably in all the circumstances by moving past the warnings he was given.

Could Santander have done anything else to prevent the scam, bearing in mind good industry practice at the time and considering what's fair and reasonable in the circumstances of the case?

In addition, Santander ought reasonably to have done more to prevent this scam. Santander recognised that this payment was unusual for Mr R, as well as the risk associated with it, but (as I've already set out) failed to adequately explain that risk or ask appropriate questions – such as how Mr R got the payment details.

I'm satisfied that some further questions by the advisors Mr R spoke to, such as, "Since receiving the invoice have you called your solicitor on a known number to check that the payment details are correct?" or asking how Mr R was satisfied the initial payment of £50 had been received, alongside an impactful explanation of why this was important and the prevalence of this type of scam, fully bringing it to life, would have reasonably led Mr R or his

daughter to contact the solicitor by phone to check the account details. I consider that there was an increased risk of fraud in this case because of the arrangement to pay the seller directly rather than through Mr and Mrs R's appointed solicitor abroad. Because of this Santander should have asked how Mr R, or his daughter, was provided with the payment details.

I'm satisfied Mr R would've told Santander the truth – that the details had come via email – and had he done so Santander ought fairly and reasonably to have explained that the email may have come from a third party to access his funds fraudulently so he or his daughter should call the solicitor directly on a known number to check the payment details. Had that happened, I'm persuaded it's more likely than not the scam would have come to light, and Mr and Mrs R's loss would have been prevented.

The relevance of this finding is that Santander ought to have prevented the loss, rather than just reimbursed Mr and Mrs R under the provisions of the CRM Code. It follows Santander should pay Mr and Mrs R interest from the date of loss, rather than the date it decided not to refund them under the CRM Code.

Santander has offered to pay Mr and Mrs R £75 for its customer service. But the entire experience has clearly been very distressing for Mr and Mrs R. They were unable to go through with the house purchase when they expected to and have been without a significant amount of money for quite some time.

I'm conscious it's the fraudsters, rather than Santander that have ultimately caused Mr and Mrs R's loss, but Santander should, at least, have refunded the loss under the provisions of the CRM Code. I'm also persuaded Santander should have prevented the scam altogether. Had it done so, much of the distress and inconvenience caused to Mr and Mrs R would have been avoided. Santander accept there were service failings in that Mr R didn't receive expected calls but, for the reasons outlined, I think it should pay a further £175 in compensation (making a total of £250 after taking into account the £75 already offered in respect of the service provided).

Putting things right

Overall, I'm persuaded that Santander should have reimbursed Mr and Mrs R under the provisions of the CRM Code. I'm not satisfied Santander has established Mr and Mrs R ignored effective warnings by failing to take appropriate action and in turn failed to meet their requisite level of care.

In the circumstances, I think Santander should now fairly and reasonably compensate Mr and Mrs R by refunding the £69,565 they lost as a result of the scam plus interest and £250 compensation as set out below.

Mr and Mrs R agreed with my provisional decision but noted they'd been able to go ahead with the purchase of the apartment abroad but were left with little by way of savings. Santander agreed to refund the funds lost in the scam as well as interest and the distress and inconvenience payment. But it said it was unclear if I was holding Santander liable under the CRM Code or determined that no one is to blame. Santander said it didn't accept any responsibility as it hadn't made any errors and it didn't agree that it didn't provide a warning during the payment journey.

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.

Having done so, I've reached the same conclusion as I did in my provisional decision (reproduced above), and for the same reasons. Neither party has raised anything that changes my mind.

My final decision

I uphold this complaint and require Santander UK Plc to:

- Refund Mr and Mrs R the full £69,565 lost to the scam less any sum recovered and refunded to Mr and Mrs R;
- Pay interest on the £50 payment at the rate of 8% simple per year from the date the bank declined the fraud claim under the CRM Code to the date of settlement;
- Pay interest on the remaining £69,515 at the rate of 8% simple per year from the date the money left the account to the date of settlement; and,
- Pay £250 in compensation for the distress and inconvenience caused to Mr and Mrs R (less any sum already paid).

If Santander is legally required to deduct tax from the interest award it should send Mr and Mrs R a tax deduction certificate so they can claim it back from HMRC as appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 14 September 2021.

Jay Hadfield
Ombudsman