

The complaint

Miss C is unhappy Santander UK Plc won't refund money she was deceived into transferring to another person.

What happened

On 8 February 2022 I issued my provisional decision on this complaint explaining that I was intending to uphold it in part. I gave both sides the opportunity to provide any further submissions before giving my final decision. That provisional decision forms part of my final decision and is copied below.

What happened

As part of her submissions, Miss C has provided a lengthy police statement, setting out the background to this complaint in considerable detail. I'd like to assure Miss C that I've considered this document carefully and in its entirety, but I've only summarised that account, as well as the other background to this complaint, briefly below:

- *Miss C was vulnerable after the death of both of her parents with whom she had a very close relationship. She inherited around £500,000 from them.*
- *In the course of purchasing a significant number of vehicles, she met a car salesman I'll call B.*
- *Miss C developed a relationship with B but saw him infrequently – mostly at service stations and never at his home.*
- *B asked for money from Miss C on numerous occasions – often claiming that he was struggling financially or was unable to support his son.*
- *B frequently promised to spend time with Miss C but there would always be a reason why he would need to change those plans at the last minute.*
- *In fact, B was living with another woman and appears to have been involved with several others - apparently also extracting significant sums of money from them.*
- *Miss C eventually reported the matter to the police.*
- *Initially the police refused to take the matter further but, following an appeal, I understand investigations are ongoing.*

Miss C estimates the value of transfers and gifts that she gave to B between 2017 and 2019 to be around £80,000, though a little less than £40,000 came from her Santander accounts and are the subject of this complaint. I also understand that, following the threat of legal action, a relative of B paid Miss C £20,000.

In February 2020, Miss C complained to Santander, but it said the matter was a civil dispute between her and B, so it declined to refund her any of the money she lost.

She referred the matter to our service, but our investigator didn't uphold her complaint.

They said that the payments that took place prior to the introduction of the Contingent Reimbursement Model “CRM Code” (on 28 May 2019) wouldn’t have stood out as being so unusual or suspicious that Santander ought to have intervened and questioned Miss C about them. In relation to the payments which took place after the introduction of the CRM Code, the investigator agreed that the matter was a civil dispute between Miss C and B.

Miss C disagreed, in summary she said:

- The bank’s failure to pick up on unusual activity on her account goes back further than the payments made to B and it should have been alerted to the fact she was vulnerable by her significant spending in the years following the deaths of her parents.*
- The fact B has paid her some money back does not mean his actions weren’t criminal. There is an ongoing investigation and other case law supports that merely paying the money back in these circumstances is not enough to demonstrate there hasn’t been criminal wrongdoing.*
- Neither did the fact the fraudster used his real name and was identifiable change the criminal intent behind his actions.*

As no agreement could be reached, the case was passed to me for a final 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.

It’s important to first point out that a conclusion that Miss C was the victim of a scam, rather than involved in a civil dispute, does not mean that she would necessarily be entitled to a refund of the money she sent to B.

The CRM Code – which sets out a framework under which scam victims should be refunded in all but a limited number of circumstances only applies to bank transfers which took place after the introduction of the Code on 28 May 2019 which, in this case, is only a small fraction of what Miss C sent – less than £1,000.

Prior to the introduction of the CRM Code, the account holder is, in the first instance, presumed liable for transactions they’ve authorised themselves, even those which they may have been tricked into making. So, in relation to the earlier transactions I can only consider whether Santander ought to have found the activity on the account so unusual and suspicious that it ought to have intervened to prevent Miss C falling victim to financial harm from fraud.

Here, I can’t say the transactions to B would have stood out as being unusual or suspicious – the payments to B are generally dwarfed by other spending which takes place on the account and there’s nothing that otherwise ought to have concerned the bank about the payments.

Miss C argues that Santander ought to have questioned her about the frequent expensive car purchases which took place even before she met B. She argues that had the bank intervened then, she would not have been in a position to encounter B.

This allegation – that the bank ought to have stopped Miss C, not from falling victim to a scam, but rather from spending her own money is very different in nature. It doesn’t appear that Miss C has previously complained about this issue to Santander. It relates to

events some of which pre-date Miss C meeting B. As such, Miss C will need to refer those matters to Santander to consider as a separate complaint. I will not be commenting on whether Santander should have intervened to prevent that spending nor whether a failure to do so caused Miss C's loss in relation to B.

For this complaint, for the reasons I've explained, that means that Santander doesn't have any liability to Miss C for the payments to B which took place before the introduction of the CRM Code.

I'm left to consider the small number of bank transfers to B which took place after the introduction of the CRM Code on 28 May 2019 and whether, in relation to these payments, Miss C is afforded its protection. The Code is only applicable to scams and not civil disputes. It does not define 'scam' or 'civil dispute' so I see no reason not to give them their ordinary meanings and define a scam as a trick or a dishonest scheme and a civil dispute as a matter which sits outside of criminal law.

It is not the method used by the fraudster that is important here – but rather what their intention was. In this case I think the relevant question is whether B set out to obtain money by deceiving Miss C.

Having thought about this matter carefully and in particular having considered Miss C's police statement and the letter she received in response to her appeal of the decision not to prosecute B, I'm minded to think that this matter is not a civil dispute.

The letter states 'what is also apparent throughout is that the suspect did knowingly and intentionally make false representations in order to make a gain for himself.' Several examples of this are described. While the need for follow up investigation into these matters is noted, like the author of the letter, I think Miss C's statement gives numerous examples of deceit by the third party, deceit which was used to obtain money from her. I find her evidence compelling.

So, while I can't know B's intentions for sure, I think the provisions of the CRM Code are relevant here.

Under the CRM Code, a firm must generally provide a refund to victims of APP scams unless they can demonstrate that one of a small number of exceptions applies. However, its provisions mean that customers who are 'vulnerable to scams in such a way that it would not be reasonable to have expected them to have protected themselves at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered' should be reimbursed regardless of whether any of the other exceptions to reimbursement apply or whether the business was aware of their vulnerability.

Miss C has provided evidence from her counsellor and I think it supports the notion that she was vulnerable at the time and, more specifically, vulnerable to this particular scam following the death of her parents. It describes how her inability to recognise or act on the troubling statements made by B may have been a continuation of her shutting down and closing off her emotions following the death of her parents. As such, the counsellor's statement suggests Miss C was less able to protect herself against the scam because she was unable

to recognise and properly understand or act upon the warning signs that B was deceiving her.

I understand Miss C has received some money back from B but it's not clearly related to

any particular transactions and I think there is little risk of Miss C recovering the same money twice. So, I'm minded to recommend Miss C is refunded those payments which were made after 28 May 2019 under the provisions of the CRM Code on the basis that she was the victim of a scam and that her vulnerability at the time means Santander should provide a refund regardless of whether any of the exceptions to reimbursement would otherwise apply. As the money came from Miss C's current account and, at the time the payments were made, it appears likely it would have been used for day-to-day spending, I also think 8% simple interest per annum should be paid on this amount.

Finally, I can see Santander contacted the bank which received Miss C's money on the same day she reported what had happened. The receiving bank confirmed that no funds remained the following day. I'm therefore satisfied Santander did what it could to try and recover Miss C's money.

My provisional decision

I'm minded to uphold this complaint in part and instruct Santander UK Plc to pay:

- *The value of the disputed authorised push payments to B which took place after the introduction of the CRM Code on 28 May 2019 - £795*
- *Interest at 8% simple per annum on this amount from the date Santander decided not to consider Miss C's claim under the CRM Code to the date of settlement.*

Santander agreed with my provisional decision. Miss C said she appreciated the findings, but had some further points to make, which I've summarised below:

- If the decision has been made that she was vulnerable, the victim of a scam and Santander were at fault, then why should she only be refunded for payments made after the introduction of the CRM Code.
- Santander took longer than permitted to decline her claim under the CRM Code and the delay in assessing Miss C's claim might have allowed B to remove money from his account. She also felt the claim wasn't handled well initially and a member of staff was rude to her.
- Had Santander intervened in the earlier spending that was not related to the scam, she wouldn't have lost the money in dispute here.
- Santander ought to have been aware she was vulnerable because she informed them of her circumstances when paying a lump sum towards her mortgage.

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.

I have carefully considered Miss C's further points, but my decision remains unchanged.

It's important to state that I have only found that Santander ought to have considered Miss C's claim under the CRM Code differently. I have not found that it was at fault for allowing the earlier payments to proceed. I'm afraid, there was no general obligation on banks to refund victims of scams, even those who were vulnerable, prior to the introduction of the CRM Code.

I've reviewed the evidence provided by Santander which indicates it declined her claim under the CRM Code over the phone on 24 February 2020 – within fifteen days of the matter first being raised with it.

Santander says it contacted the receiving bank the same day the matter was reported. Though I haven't seen the request itself, the bank's notes suggest this had happened by 24 February 2020 (at the latest). So, I'm satisfied it responded to the claim within the timeframes set out in the Code and, given the scam was reported many months after the last disputed transaction, I can't say there was a material delay in trying to recover Miss C's money.

The timeframes for responding to a complaint of this nature are essentially the same as those set out in the CRM Code for considering a claim. However, a claim under the CRM Code and a complaint are not the same thing.

Santander's notes say that a complaint wasn't raised until 18 June 2020, which was responded to on 7 August 2020 – more than 35 days after it was raised, but within the eight weeks allowed for other types of complaint.

While it's unclear whether Miss C believed that Santander were still looking into matters between February and June 2020, I can't see that a delay would have had a meaningful impact on Miss C – Santander had already contacted the receiving bank and communicated a decision about her claim. In relation to the accusation that a member of Santander's staff was rude to her and the investigation wasn't handled well, as far as I can see, this is the first time Miss C has raised this argument and Santander hasn't had the opportunity to respond to it. But in any case, I've not seen any evidence to support these allegations and so I'm not persuaded to find against Santander on that point.

Finally, I understand Miss C has started another complaint about the earlier non-scam payments from her account. Whether any alleged failure to intervene by Santander into that spending has caused Miss C loss (including the loss which is the subject matter of this complaint) necessarily involves examining those earlier events which fall outside of this complaint. So, I can't comment on this further.

Similarly, the allegation that Santander knew, or ought to have known, that Miss C was vulnerable doesn't change my decision. That's because I've concluded that the payments to B were unremarkable and there would have been no reason for Santander to question them. It follows that this point relates to the question of whether Santander should have intervened in the earlier, more substantial, spending.

For the reasons I've explained, my final decision is unchanged from my provisional decision.

My final decision

I uphold this complaint in part and instruct Santander UK Plc to pay:

- The value of the disputed authorised push payments to B which took place after the introduction of the CRM Code on 28 May 2019 - £795
- Interest at 8% simple per annum on this amount from the date Santander decided not to consider Miss C's claim under the CRM Code to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 29 March 2022.

Rich Drury
Ombudsman