

The complaint

Ms D is unhappy Santander UK Plc won't refund the money she lost as the result of a scam.

What happened

I'm not going to cover all the points raised in detail. The view of 2 December 2021 covered the details of Ms D's testimony. But briefly Ms D's mother told her about an investment opportunity she'd made via a work colleague – I will refer to as M. M originally discussed the possibility of contributing funds to an investment scheme via a trader - I will refer to as A - with Ms D's mother in September 2018. Around September 2019 Ms D had an investment maturing and her mother told her about the scheme.

Ms D passed on her details and received a call from M. M told Ms D she could expect returns of 30%-40% in three to four months. Ms D decided to think about the investment opportunity and messaged M the next day to invest £10,000. On 12 September 2019, Ms D made a faster payment of £10,150 (which included a fee of £150) to M's account.

Ms D messaged M to find out how the investment was going but after a couple of months M stopped responding to Ms D's messages and it was at this point she realised she'd been scammed. On 27 November 2020, Ms D contacted Santander to raise a scam claim. Santander felt Ms D did not take reasonable steps to protect herself before making the payment.

Our investigator upheld the complaint in part as - whilst he agreed Ms D didn't take reasonable steps to protect herself - he didn't think Santander had issued an effective warning. So, he recommended Santander refund 50% of the transaction.

Both parties originally accepted the conclusions, but later Ms D said she didn't agree and asked for a decision.

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; regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Ms D has referred to her mother's case which was upheld. I don't know the finer details of that particular case - but each case is judged on its own merits and what may appear (on the face of it) to be a similar set of circumstances, may often transpire not to be the case. It is worth noting that the case was resolved at a very early stage and 'mediated' with the business. It also was not considered under the Lending Standards Board Contingent Reimbursement Model (the CRM Code) which came into force in May 2019.

I accept Ms D did fall victim to a scam but, there is no automatic right to a refund for victims of fraud. In fact, the relevant regulations (and the terms of her account) make Ms D responsible for payments she's made herself in the first instance. In broad terms, the starting position at 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. There's no dispute here that Ms D authorised the payment.

However, where a customer makes a 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. When thinking about what is fair and reasonable in this case, I've considered whether Santander should have reimbursed Ms D in line with the provisions of the CRM Code it has signed up to and whether it ought to have done more to protect Ms D from the possibility of financial harm from fraud.

There's no dispute here that Ms D was tricked into making the payment. She thought she was making an investment, and this wasn't the case. But this isn't enough, in itself, for Ms D to receive a refund of the money under the CRM Code. The Code places a level of care on Ms D too.

The CRM Code

Santander has signed up to the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances.

One such circumstance might be when a customer has ignored an effective warning. Santander agreed to refund 50% of Ms D's loss as it feels it didn't provide an effective warning when Ms D made the transaction; accepting that it ought to have done more and recognising that means it bears some responsibility for Ms D's loss. As it has already accepted it didn't provide an effective warning and ought to have done more before allowing the transfer of £10,150, I've not considered this point further.

A second circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the payments without having a reasonable basis for believing that:

- the payee was the person the customer was expecting to pay;
- the payment was for genuine goods or services; and/or
- the person or business with whom they transacted was legitimate

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I am persuaded the concerns Santander has raised about the legitimacy of the transaction Ms D was making are enough to support its position that she failed to meet her requisite level of care under the CRM Code for the payments she made. It follows that I think Santander has been able to establish that it may choose not to reimburse Ms D in full under the terms of the CRM Code.

Did Ms D have a reasonable basis for belief?

Having thought about what both sides have said and provided, I don't consider Ms D had a reasonable basis for believing the payments she was making was for a genuine investment. I say this because:

- Ms D invested a large sum of money based on advice from her mother and mother's colleague. I appreciate Ms D's mother had known her colleague for some time – but the original third party involved A – was not someone she knew and so warranted further checking.

- The investment returns the scammer mentioned were too good to be true. Ms D was told she could expect a rate of return of 30-40% in three to four months. I consider that the promised returns and timescale were so unrealistic that Ms D ought reasonably to have had significant concern about the legitimacy of the opportunity. That, in turn, ought to have led to a greater degree of checking on her part.
- Ms D confirmed she didn't carry out any checks to enable her to establish the legitimacy of the investment she was dealing with before investing large sums. I think she ought reasonably to have done more.

Ms D went ahead and made the payment despite all of these red flags. Under the CRM Code where a business has failed to provide an effective warning, but the customer hasn't met the requisite level of care, each party must accept equal responsibility. In these situations, the CRM Code requires the payment service provider to reimburse 50% of the losses – which is what Santander has already offered to do.

Finally, I've considered whether Santander took reasonable steps to recover Ms D's funds, and I think it did. The scam payment was made on 12 September 2019 and the scam was reported on 27 November 2020 – over a year after the transaction. It's evidenced that Santander contacted the receiving bank within an hour. Although it seems not to have received a response from the beneficiary bank; it's subsequently been established that no funds remained and were moved immediately. It's not surprising as fraudsters usually remove funds immediately to avoid the possibility of funds being claimed. I'm not persuaded that Santander could've taken any further action that would've led to the recovery of Ms D's remaining funds.

I realise my decision will be a significant disappointment to Ms D. I do accept she has fallen victim to what can only be described as a cruel and callous scam. But I'm only considering whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. I'm sorry she has lost money and I can understand why she would like to be compensated for more of her losses. However, despite my natural sympathy for the situation she finds herself in ultimately, I don't think she had a reasonable basis for belief. It therefore follows that I don't think that Santander's refusal to reimburse Ms D the other 50% of her losses was unfair or unreasonable.

Putting things right

I understand that Santander has already settled the matter in line with the view, but in the event it hasn't, it should now put things right for Ms D as follows:

- refund 50% of the money she lost as a result of the scam
- add 8% simple interest from the date the payment was made up to the date of settlement

My final decision

My final decision is I uphold this complaint in part and require Santander UK Plc to put things right as set out above – if it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 11 November 2022.

Kathryn Milne

Ombudsman