

The complaint

Miss R complains that Santander UK Plc ('Santander') won't refund payments she made after falling victim to a scam.

Miss R's complaint was brought with the help of a representative. However, as the account is in Miss R's name, and Miss R had the call with the scammers and made the payments, I'll refer to Miss R throughout the decision.

What happened

In November 2022, Miss R noticed a transaction on her account of £70 relating to a parking charge notice fee. Miss R hadn't received a notice and didn't own a car, so she reported it to Santander.

Miss R called Santander to report the fraud on 25 November 2022. During that call Santander got details of the transaction Miss R was disputing and at the end of the call read out a scripted scam warning to Miss R. As part of this warning Miss R was told about the importance of keeping her personal and security information safe and not to share it with anyone else. Miss R was also told that fraudsters may contact her pretending to be the bank but that any trusted organisation would never ask her to withdraw, transfer or send money from her bank account and if they do it's a scam.

Miss R was told that she should keep an eye on her account as the £70 may just be refunded to her bank account. It was unclear whether she would be called back about her claim. The £70 was refunded to Miss R's bank account without her receiving a call from Santander.

A few days later on 29 November 2022, Miss R got a call from someone saying they worked for Santander. Miss R says that the call had no caller ID which she thought was odd and questioned, but the caller told her it was for security reasons. The caller told Miss R they had noticed fraudulent activity on her account and asked if she recognised some transactions done in Aberdeen. They also told Miss R that someone was logged into her online banking in Aberdeen. Miss R confirmed that she didn't recognise the transactions and that she wasn't logged into her online banking. Miss R says the caller knew her phone number, where she lived and about her prior call to Santander about the parking fee. Miss R was told that her account was at risk and that they would need to give her a new sort code and account number. They got Miss R to make three transfers from her account to a new payee. The payments were for £550, £405 and £350.

Miss R says the caller walked her through the mobile banking process to make the payments, told her what to write and told her to select the payment purpose "transferring to a friend" rather than the payment purpose of "transferring to own account". She says that when the Confirmation of Payee (COP) no match occurred, they told her it was because her new account hadn't been activated yet, so it wasn't being recognised.

Miss R says she had concerns about why she was being asked to transfer money, saying it didn't feel right, but that the caller kept reassuring her. Also, that each time she made one of the transfers they made her log out of her online banking, which was a bit strange.

Miss R says it wasn't a good time when they called her as she was out with friends, but she was concerned about losing all her money, so she made the transfers.

Once the transfers had been made, the caller told Miss R they would call her back at 6pm and help her log into her new account. By the time they called back, Miss R was concerned that she'd been the victim of a scam so asked them to call her the next day – but they never called back.

Miss R reported the scam to Santander and asked them to refund the money she'd lost.

Santander considered her fraud claim but declined to refund Miss R. They said Miss R had received a warning during the call of 25 November, which she had ignored. Also, that she hadn't done enough checks to make sure the call was genuine.

Miss R wasn't happy with Santander's response, so she brought a complaint to our service.

As part of her complaint Miss R and her representative raised the following points:

- Santander didn't do enough to protect Miss R.
- They'd requested Santander provide transcripts of the calls Miss R had with them, but they'd been given a CD with the call recordings which they were unable to listen to.
- Santander hadn't provided the investigation report into either the £70 disputed transaction or the later scam.
- Miss R was vulnerable as she was a student, away from home for the first time and was inexperienced in financial matters.
- Santander should've implemented a password or phrase as a security feature for any calls with Miss R, following the first fraud report.
- Santander provided inadequate communication after the event which exacerbated the distress Miss R experienced.
- Santander was asked to provide a copy of their Vulnerable Customer Policy and details of their vulnerable customer identification processes – which they hadn't.

An investigator looked into Miss R's complaint but didn't uphold it, for the following reasons:

- Santander are a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) and the investigator considered Santander's liability under the Code.
- The investigator didn't think Miss R met the definition of vulnerable as set out in the CRM Code, highlighting that Miss R did have concerns and asked questions during the call she had with the fraudsters – which suggested she was able to take steps to protect herself.
- Based on the payment size and Miss R's previous account use, the investigator didn't think Santander should've identified a scam risk, therefore Santander weren't required to provide an effective warning.
- The investigator wasn't satisfied that Miss R had a reasonable basis for believing the

caller was genuine based on the concerns she had during her interaction with them.

- The investigator felt Santander had completed an appropriate investigation into Miss R's fraud claims, provided sufficient information about why they were declining the fraud claim and weren't required to provide Miss R with a copy of their investigation notes.
- The investigator hadn't relied on the warning Santander gave Miss R in the call on 25 November in deciding whether Miss R had a reasonable basis to believe the call was genuine.
- Our service can't ask Santander to change their security measures or ask them to apply passwords to calls.

The investigator gave Miss R a copy of the call recordings that Santander had shared with our service.

Miss R disagreed with the investigator's opinion and asked for the case to be passed to an ombudsman.

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'd like to reassure Miss R and her representative that I've read their responses explaining why they disagree with the outcome the investigator reached. I might not address each individual point they've raised, but I've considered them all in reaching my decision.

The starting position is that Santander are expected to process payments and withdrawals that its customers authorise, in accordance with the Payment Service Regulations and the terms and conditions of the customer's account. So, when Santander made the payments, it was complying with Miss R's instructions. Although I appreciate that Miss R didn't realise that she was the victim of a scam at the time she was making the payments.

Is Miss R entitled a refund under the CRM Code?

Santander are a signatory to the Contingent Reimbursement Model Code (the CRM Code) which requires firms to reimburse customers who have been the victims of APP scams like this, in all but a limited number of circumstances.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that an exception applies. In this case, Santander say Miss R 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.

I'm satisfied that Santander can rely on this exception to reimbursement for the following reasons:

- Miss R had concerns when she took the call, as there was no caller ID despite the caller saying they worked for Santander. I'm not satisfied that the caller's explanation that their number was withheld due to security reasons was believable.
- Miss R had concerns about why she was being asked to transfer money out of her account but didn't take any steps to check what she was being told or try to call Santander on a known phone number.

- While the caller knew Miss R's phone number, where she lived and that she had disputed a transaction previously – I can't see that they followed the usual security steps that Santander would complete.
- Miss R had concerns about why she was being asked to log out of her online banking after making each payment. It's not clear what questions she asked about this, or why her bank would require her to log out of her online banking during the process of making payments.
- Miss R was told to select a payment purpose that referred to paying a friend, rather than one for transferring money to her own account. It's not clear why Santander would ask her to choose an incorrect payment method. I'm also concerned that there was a Confirmation of Payee no match, especially as Miss R had set up the payee as her own name and was expecting to pay money into her own (new) account. Miss R was told it was due to her account not being activated, however I'm not satisfied this was a reasonable explanation.

It's clear that throughout the call with the fraudster that Miss R had doubts about who she was talking to and what she was being asked to do. Having these doubts, I would've expected her to do some basic checks on who she was talking to – which would include calling Santander back on a registered number. Or, for Miss R to not make the transfers and simply ask the caller to block her Santander account which they would be able to do if they were calling from the bank. Taking all of the points above into consideration as a whole, rather than on an individual basis, I'm not satisfied that Miss R had a reasonable basis for believing that she was talking to her genuine bank.

I also considered whether Santander met its obligations under the CRM Code. Based on the size of the payments, previous account usage and the pattern of the payments, I'm not persuaded that Santander should've identified a scam risk. On that basis, they weren't required to provide an effective warning and have met their obligations under the Code.

I appreciate that Miss R thinks the payments should've triggered as suspicious as they were made while she was in her overdraft. However, when deciding whether a payment should be of concern to a bank, there are multiple factors that we consider. Looking at her statements I can see that Miss R had been using her overdraft earlier in the month of November, and as this was a student account with an agreed overdraft facility, I'm not persuaded that the use of the overdraft for the payments was that unusual or out of character that Santander should've been concerned.

As I'm satisfied Santander has met its obligations under the CRM Code and can rely on an exception to reimbursement, I can't fairly ask them to refund Miss R.

Does Miss R meet the definition of vulnerable set out in the CRM Code

I considered whether Miss R was vulnerable as set out in the CRM Code, which would entitle her to a full refund regardless of whether an exception to reimbursement applies. But in the circumstances of this case, I'm not satisfied that she was.

The CRM Code describes vulnerability as Miss R being vulnerable to the extent that she was unable to protect herself at the time of becoming the victim of the scam, against this particular scam and to the extent of the impact she suffered.

In this case, Miss R told us that she questioned why the fraudster was calling her from a withheld number, had concerns about why she was being asked to transfer money and thought it was odd that she was being asked to log out of her online banking after making

each payment. All of these concerns suggest she identified that the caller may not have been genuine and persuades me that she could've protected herself against this scam.

I appreciate that Miss R was living away from home for the first time and had started university, all of which are big changes and can be unsettling, and that she may be inexperienced in financial matters. But, in these circumstances and for the reasons I've given, I'm not satisfied that I can fairly ask Santander to refund Miss R due to vulnerability under the CRM Code.

Miss R's dissatisfaction with Santander's processes and procedures

Miss R feels that Santander should've put a security password or phrase in place after she reported the first fraud, so that she would know it was them calling. However, I can't fairly require or ask Santander to change their processes or procedures as this isn't within our remit. Also, from what I've seen, Santander do complete security when they call a customer.

I think it's worth noting too, that Santander did warn Miss R she might be contacted by fraudsters when she reported the first fraud on the 25 November. This warning specifically referred to Miss R potentially being called by someone pretending to be the bank and using her information to convince her they were genuine. Miss R was told that no trusted organisation would ask her to withdraw or transfer money from her account. I think it was appropriate for Santander to provide this warning.

Miss R has asked for a copy of Santander's Vulnerable Customer Policy and details of their vulnerable customer identification processes. But I'm conscious that this may not be something they share with customers as vulnerability is often established based on individual circumstances of a customer and how they respond to that vulnerability may vary based on those circumstances. Also, this policy is likely to be considered commercially sensitive, and I wouldn't expect Santander to share commercially sensitive information.

Some of Miss R's concerns around vulnerability and Santander's processes and procedures relate to her not having access to information in order to protect herself against scams and fraud. I can see that Santander have information available on their website about the most common types of scams, guidance as to how consumers can protect themselves from falling victim to these scams, as well guidance on what to do if a consumer believes they are the victim of a scam.

Also, I'm not persuaded that based on Miss R's personal circumstances as she's explained them to us, that Santander should've identified her as vulnerable or put any additional security measures in place as a result. And I'm satisfied that they took appropriate steps during their call with Miss R by explaining that she may be contacted by a fraudster and gave some warning signs that she should look out for.

The level of customer service Miss R received

Miss R has raised dissatisfaction with the information that she was given by Santander in relation to both of her fraud claims and feels that Santander should've provided her with a copy of their investigation notes in relation to her claims.

I'd like to reassure Miss R that based on what I've seen, Santander carried out an appropriate investigation into her fraud claims. They upheld her first fraud claim and refunded the money directly to her account, and for the second fraud claim they wrote to Miss R and explained why they wouldn't be refunding her loss.

I wouldn't expect Santander to provide Miss R with a copy of their investigation notes which are likely to contain confidential or commercially sensitive information. I appreciate that Santander could've provided a better level of service by telling Miss R that her first fraud claim was upheld, but in the call with Miss R on 25 November she was told that she might not be contacted and that the funds might just be credited to her account – which they were.

I can see that Miss R asked Santander for a transcript of the calls she had with them, as a result Santander sent her an audio CD with the call recordings. Miss R says that she couldn't listen to the CD, and I think Santander could've provided a better level of service by explaining what methods they could use to provide this information to Miss R, so she was aware of her options. However, our investigator has provided Miss R with a copy of these calls.

Having carefully considered all the points that Miss R has raised I think Santander could've provided a better level of service, but I'm not satisfied that this warrants a compensation payment.

I'm very sorry that Miss R has lost this money after falling victim to a scam and the impact this has had on her. But having considered everything she's told us I can't fairly ask Santander to refund her.

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 R to accept or reject my decision before 14 September 2023.

Lisa Lowe
Ombudsman