

## **Complaint**

Miss I is unhappy that Santander UK Plc didn't reimburse her after she fell victim to a scam.

## **Background**

The background to this case is well known to the parties so I don't intend to set it out in full here. What follows is a summary of what happened.

In 2019, Miss I fell victim to what's known as a romance scam. She made contact with someone on a dating website who claimed to be a member of the United States army on deployment. They communicated frequently and an apparent relationship developed between the two. Unfortunately, Miss I wasn't in contact with a legitimate individual. She'd been targeted by a fraudster.

He told Miss I that he had a healthy balance in his bank account but couldn't access funds while on deployment. To reassure her, he sent her a copy of his bank statement to show the balance. He gave several reasons for needing her financial support. He first asked her to pay his phone bill and then to transfer him money for food. She was then contacted by someone who claimed to be his commanding officer who told her that he'd been injured in combat. He needed help to pay medical expenses associated with treating his injuries. After recovery, he told Miss I that he would travel back to the United States to access his account, but that he needed her support with travel costs.

She made 47 payments over a period of roughly nine months. The total value of those payments was just under £52,000. Between 1 November 2019 and 3 March 2020, those payments were bank transfers. There were further payments between 17 March 2020 and 8 August 2020, but these were card payments.

Miss I told Santander that she'd fallen victim to a scam, but it didn't agree to reimburse her. She was unhappy with that response and so she referred her complaint to this service. It was looked at by an Investigator who upheld it in part.

The Investigator said that Santander should've done more to protect her from the scam. However, he thought that Miss I hadn't acted reasonably here and so it was fair and reasonable for it to make a deduction from the refund he recommended. Miss I's representatives disagreed with the Investigator's opinion. They said that Santander should've called and queried the payments. If it had done so, it says that the scam would've been quickly uncovered. It also said that Miss I was isolated and vulnerable as a consequence of the coronavirus pandemic and the associated restrictions. It argued that Miss I should be entitled to a full refund of her losses, rather than just a partial one.

Because Miss I disagreed with the Investigator's view, the complaint was passed to me to consider and come to a final decision.

## **Findings**

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

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.

However, that isn't the end of the story. First, Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams, like the one Miss I fell victim to, in all but a limited number of circumstances. It only applies to the money Miss I lost between 1 November 2019 and 17 March 2020.

The later payments aren't covered by the code because they were card payments. However, good industry practice required that Santander be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified. These expectations apply to all of the payments Miss I made in connection with the scam.

### *The CRM Code*

The starting point under the code is that a firm should reimburse a customer who has fallen victim to an APP scam, unless an exception to reimbursement applies. The most relevant exception is one that allows a firm to decline to pay a refund if *"the customer made the payment without a reasonable basis for believing ... the person or business with whom they transacted was legitimate."*

I've considered the circumstances here carefully, and while I don't doubt that Miss I sincerely believed she was responding to legitimate requests, I'm not persuaded that belief was a reasonable one. The explanations given by the scammer to justify why the payments were needed were far-fetched and became more so over time. The documents sent to support these explanations were also not credible. By way of example, a letter that purported to have been sent by the legal team at the scammer's bank reassuring her about the funds in his account was full of errors and written in extremely poor English. There were several points throughout where Miss I ought to have treated what she was being told with far greater scepticism and only proceeded with caution.

Miss I's representatives have argued that she was vulnerable because of isolation during the coronavirus pandemic. The CRM Code says that a customer is vulnerable if:

*"... it would not be reasonable to expect that Customer 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."*

It goes on to set out relevant factors when deciding if a customer is vulnerable:

*All Customers can be vulnerable to APP scams and vulnerability is dynamic. The reasons for dynamics of vulnerability may include: the personal circumstances of the Customer; the timing and nature of the APP scam itself; the capacity the Customer had to protect themselves; and the impact of the APP scam on that Customer.*

This can be significant because, where a customer is vulnerable, the code requires the reimbursement of scam victims even if they made payments without a reasonable basis for believing they were in connection with a legitimate purpose. Miss I's representatives have argued that she was isolated because of the coronavirus pandemic and this made her vulnerable. However, I'm not persuaded that was a particularly significant factor. Miss I

started making payments in November 2019 which was several months before the UK government imposed lockdown restrictions and nearly three months before there was any public statement by the government about the coronavirus.

I've also considered whether Santander met its requirements under the code. Firms are expected to take steps to identify payment instructions that run a higher risk of being associated with an APP scam. On spotting such a risk, a firm is expected to provide its customer with 'effective warnings' which should include appropriate actions for those customers to take to protect themselves. The earliest payments made in connection with the scam were relatively small and I wouldn't have expected Santander to identify an associated fraud risk. However, the Investigator thought that it should've been prompted to take action when Miss I authorised a second payment of £2,500 on 2 January 2020. By that point, the value of the transfers had increased significantly. Miss I had transferred £5,000 in total on that day and the second payment was to a new payee. I'd agree with that conclusion. Santander should, at that point, have provided Miss I with an effective warning. From the evidence I've seen, it didn't do so and so it needs to refund 50% of those payments which are covered by the CRM.

### *The later payments*

The payments made from 17 March 2020 onwards aren't covered by the CRM Code. Nonetheless, Santander was still expected to be on the lookout for potential APP scams. The first payments made in this tranche wouldn't reasonably have been a cause for concern given their relatively low value. However, I think it ought to have been concerned when the payments increased in value and frequency. On 22 May 2020, Miss I made two payments of £2,000. I think it was at that point that it ought to have been concerned about the possibility that she was at risk of financial harm due to fraud.

It shouldn't have processed that second payment without first contacting her to satisfy itself that she wasn't falling victim to a scam. If it had called her and asked for further details about the payments, I think it's more likely than not that Miss I would've answered openly and honestly. An employee of the bank ought to have recognised that she'd been targeted by a very commonly occurring scam type and warned her appropriately. If this had happened, I think it's most likely her subsequent losses would've been prevented.

However, I've also considered whether Miss I can fairly and reasonably be considered responsible for her own losses here. My role is to determine this complaint based on what I consider to be fair and reasonable in all the circumstances. However, I've taken into account what the law says about contributory negligence. Having done so, I'm satisfied that it is fair and reasonable for Santander to make a deduction from the compensation payable here. I've come to that conclusion for the same reasons that I found she didn't have a reasonable basis of belief when making the earlier payments.

I don't say any of this to downplay or diminish the fact that Miss I has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for her and the position she's found herself in. However, my role is limited to looking at the actions and inactions of the bank and I'm satisfied that the decision I've set out above is a fair and reasonable one.

### **Final decision**

For the reasons I've explained above, I uphold Miss I's complaint in part.

If Miss I accepts my decision, Santander UK Plc needs to:

- Refund 50% of the payments made between the second payment on 2 January 2020

until the payment on 3 March 2020. It should add 8% simple interest per annum to these payments calculated to run from the date it declined her claim under the CRM Code until the date any settlement is paid.

- Refund 50% of the payments made between 22 May 2020 until 8 August 2020. It should add 8% simple interest per annum to these payments calculated to run from the date the payments were made until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 21 March 2024.

James Kimmitt  
**Ombudsman**