

## **The complaint**

Mr S complains that Santander UK Plc won't refund the money he lost when he was the victim of a scam.

## **What happened**

In mid-2021, Mr S started talking to a woman on a website offering female companionship. They started exchanging messages, first through the website and then through an instant messaging service. And their relationship developed to the point where they were communicating most days and Mr S felt they were in a romantic relationship.

As their relationship developed, the woman started asking Mr S for money. Initially this was to help with medical expenses for her grandmother, as well as for day-to-day expenses. Then later the woman asked for money for more reasons including medical expenses of her own, gift cards for her family and travel expenses to see her family in Mexico and then return to the UK. And Mr S says that, as he believed their relationship was genuine and trusted her, he made the payments she requested.

Mr S made payments from his Santander account to a number of different accounts the woman gave him the details of. He also made payments to an account he held with another bank, before sending this money on to the woman. I've set out the payments Mr S made from his Santander account on the attached spreadsheet.

Unfortunately, we now know the woman was a scammer. Mr S says he realised it was a scam when the woman said she's missed her flight back to the UK. He then reported the payments to Santander as fraud and asked it to refund the money he had lost.

Santander investigated and offered to refund 50% of the payments Mr S had sent directly to the accounts the scammer had given him – as it accepted it could have done more to protect him but also thought he could have done more to protect himself. But it didn't offer to refund any of the payments he made via the account he held with another bank, as it didn't think it was responsible for them. Mr S wasn't satisfied with Santander's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought Santander's offer was fair, as they thought Mr S should have had concerns about the payments he made directly to the account details the scammer gave him. And they didn't think Santander was required to intervene in the payments Mr S made via the account he held with the other bank. Mr S disagreed with our investigator, so the complaint has been passed to me.

## **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.

*Are the payments Mr S made covered by the CRM code?*

I've first considered whether the CRM code applies to all the payments Mr S made as a result of this scam.

The Lending Standards Board Contingent Reimbursement Model (the CRM code) is a voluntary code Santander has signed up to. It sets out a number of circumstances in which firms are required to reimburse customers who have been the victims of certain types of scam. But it only covers payments where a customer paid funds to another person for what they thought were legitimate purposes, but which were in fact fraudulent.

In this case, some of the payments Mr S made were transferred directly from his Santander account to bank details the scammer gave him. And so I think these payments are covered by the CRM code.

But other payments Mr S made, highlighted in bold in the attached spreadsheet, were sent to an account in his own name he held with another bank. So these payments weren't sent to another person, and the way the CRM code is written means I don't think it applies to these payments.

#### *The payments covered by the CRM code*

As I explained above, the payments Mr S sent directly to the account details the scammer gave him are covered by the CRM code. This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr S fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
  - o the payee was the person the customer was expecting to pay;
  - o the payment was for genuine goods or services; and/or
  - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

#### *Was Mr S vulnerable, under the CRM code?*

The CRM code says that, where a customer is vulnerable, the firm should refund them in full – regardless of whether any of the exceptions to reimbursement apply. And it defines a customer as vulnerable if it would not be reasonable to expect them to have protected themselves from the particular scam they fell victim to.

Mr S has argued that he should be considered vulnerable to this kind of scam for a number of reasons, including that he was isolated, in a loveless arranged marriage, is partially blind, suffered from a significant mental health condition and had a fire at his property at the time. And my intention isn't to diminish the difficulties these issues cause him and I don't underestimate the impact they have on him. But, from what I've seen, I don't think his circumstances were such that he was unable to protect himself from this particular scam.

Mr S appears to have had at least some contact with his children and several other relatives, as he mentions interactions with them in his conversations with the scammer. He was able to communicate frequently with the scammer, and appears to have been able to carry out his job and other day-to-day activities. During his conversations with the scammer he identifies a number of things about what is happening that concern him, and steps either he or the

scammer can take to address these. And the fire happens after he has started sending payments to the scammer. So I don't think the evidence suggests his perception of possible risks or ability to address them was adversely affected by his circumstances at the time.

And so I don't think Mr S meets the definition of vulnerable from the CRM code, and I think the exclusions to reimbursement could still apply.

*Did Mr S have a reasonable basis for belief when making the payments?*

Santander has argued that Mr S didn't have a reasonable basis for belief when he made these payments. And while I appreciate that this was a sophisticated scam where the scammer built up trust with Mr S for some time, I also think there were a number of things about what has happened that should have caused him significant concern.

The messages between Mr S and the scammer I've seen show he thought a lot of the women on the website they started talking through were fake. He mentions he has sent money to women he has met through the website before but that it was fraud and they just wanted to get more money from him. But it's not clear why Mr S thought the scammer was genuine. And if Mr S was aware that fraudsters used the website, I think it's reasonable to expect him to be more cautious before sending money again.

Mr S also appears to have had concerns that the scammer was not genuine. He mentions a number of times that he is suspicious or doesn't trust her, and also says that he doesn't think she is real. And the scammer doesn't appear to have taken any of the steps he asked her to in order to prove she was genuine, or to have sent him any other convincing evidence she was real. So again, if Mr S had these concerns, I think it's reasonable to expect him to be more cautious before sending money.

During their relationship, Mr S and the scammer arrange to meet in person a number of times. But every time, the scammer either doesn't arrive at the agreed meeting place or messages shortly beforehand that they won't be able to meet. And I think the scammer unexpectedly failing to meet them on several occasions, and therefore never having met them in person, should have caused Mr S significant concern about whether they were genuine.

The account details Mr S was asked to make the payments to were also in the names of a number of different individuals he didn't know and also hadn't met. He doesn't appear to have been given clear explanations for who some of these people were or how the scammer would receive the money from these people once he paid them. And I don't think the explanations he was given for some of the accounts, or the explanations the scammer gave for why he couldn't transfer money straight to her, were particularly plausible. So I think being asked to transfer money in this way should also have caused Mr S significant concern.

The scammer also frequently asks Mr S to buy gift cards to send to her, or says that she needs money to be put into her cryptocurrency wallet. And, particularly given the financial situation she says she is in, I think being asked to send money in this way should have caused Mr S concern too.

I sympathise with the position Mr S has found himself in. And I appreciate that he thought he was speaking to someone he trusted. But I think there were a number of things here which should have caused him significant concern. And I don't think he did enough, or that the seemingly genuine information he was given should have been enough, to satisfy those concerns. So I think Santander has established that Mr S made the payments without a reasonable basis for belief that they were genuine.

Santander has therefore established that one of the exceptions to reimbursement under the CRM code applies here, and it does not have to refund Mr S all the money he lost.

*Did Santander meet its obligations under the CRM code?*

Even though I don't think Mr S had a reasonable basis for belief when making the payments, he may still be entitled to a refund of some of the money he lost if Santander didn't meet its obligations under the CRM code – one of which is to provide effective warnings when it identifies a scam risk.

Santander has accepted that it should have identified a risk here and didn't do enough before allowing the payments to go through. So it has accepted that it didn't meet its obligations under the CRM code.

Where one of the exceptions to reimbursement applies, but a firm also didn't meet its obligations, the CRM code sets out the refund that the customer is entitled to. Where the sending firm didn't meet its obligations, as is the case with most of these payments, the CRM code says the customer is entitled to a refund of 50% of the money they lost. And when both the sending firm and receiving firm didn't meet their obligations, as is the case for the payments of £1 and £99 to the 7<sup>th</sup> account details on 15 August 2021, the code says the customer is entitled to a refund of 66% of the money they lost.

As Santander has already offered to refund the money Mr S lost from the payments covered by the CRM code in line with this, I think this is a fair and reasonable offer and I don't think it would be fair to require it to refund any more of these payments than this.

*The payments not covered by the CRM code*

As I explained above, the payments Mr S made to his own account with another bank, highlighted in bold in the attached spreadsheet, aren't covered by the CRM code. And Mr S accepts he made these payments himself. So while I recognise that he didn't intend for the money to ultimately go to a scammer, he did authorise these payments. And so the starting position is that he is liable for the payments and Santander doesn't have to refund them.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I think Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

So I've also considered whether Santander should have identified that Mr S was potentially at risk of fraud as a result of these payments, or otherwise done more to protect him.

But none of these payments were for particularly large amounts of money, or for amounts large enough that we would expect a bank to identify a payment as suspicious based on its size alone. There were a number of payments in and out of Mr S's account around the time of these payments for similar amounts. The payments were relatively spread out, of fluctuating amounts and often with gaps of several days between them, so I don't think they formed a particularly suspicious pattern. None of the payments left the balance of the account at a particularly unusual level. And the payments were all made to an account in Mr S's own name.

So I wouldn't have expected Santander to identify that Mr S could be at risk of financial harm as a result of these payments. And I don't think it's unreasonable that Santander didn't take any further steps or carry out any additional checks before allowing these payments to go through.

Mr S has argued that Santander should have identified he could be at risk of financial harm as a result of some of the payments that are covered by the CRM code. And that, if it had intervened when these payments were made, the scam would have been uncovered and he wouldn't have sent any further payments.

But, even taking these payments into account, I think it's reasonable that Santander didn't identify a suspicious pattern of payments or that Mr S could be at risk of financial harm from fraud. The amounts of the payments fluctuated both up and down, so there was no clear pattern of payments increasing over time as is often seen with scams. The payments were to several different sets of account details, so I don't think it's immediately obvious that they are connected. And Mr S's account was in frequent, everyday use and it wasn't uncommon for him to make a number of payments on the same day or to send payments to individuals' accounts.

And so I still don't think Santander acted unreasonably, or that it would be fair to require it to refund the payments not covered by the CRM code.

### Recovery

We expect banks to take reasonable steps to help customers recover any money they have lost as a result of a scam. So I've also considered whether Santander did enough to try to recover the money Mr S lost.

Santander has sent us evidence showing it contacted the banks the payments covered by the CRM code were sent to, asking if any funds could be returned. But it was told there were no funds left to be returned. And while Santander could have contacted these banks more quickly, given the amount of time that had passed since the payments were made when Santander was made aware of the scam, I think it's unlikely anything we would reasonably have expected it to do would have led to Mr S's money being recovered.

I also wouldn't expect Santander to try to recover the payments not covered by the CRM code, as these were sent to an account in Mr S's own name.

So I don't think it would be fair to require Santander to do anything further to recover the money Mr S lost.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 19 April 2024.

Alan Millward  
**Ombudsman**