

The complaint

Mrs G is unhappy as Santander UK Plc (“Santander”) won’t fully refund the money she lost as a result of a third-party scam.

What happened

I’m not going to cover all the points raised in detail. The view of 15 June 2023 covered the details of what happened. But briefly Mrs G was tricked into making two payments for £524 for a fridge/freezer she had seen online.

Santander refunded 50% of the two transactions on the basis that it did not feel it met the standards set out in the Lending Standards Board Contingent Reimbursement Model Code (the CRM Code). But it declined to refund Mrs G in full because it didn’t feel Mrs G had done everything expected of her. In particular, it felt that she did not see the item before she purchased it or validated the seller in person.

Our investigator did not uphold the complaint. He felt Mrs G’s testimony had changed and he placed weight on what she originally told the bank. He considered that she hadn’t done enough checks or if she had (as she now says she had done)– those checks would have revealed enough cause for concern not to proceed.

I issued my provisional decision on 14 November 2023 explaining why I was intending to reach a different outcome to our investigator.

Santander accepted my provisional decision. Mrs G did not respond.

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.

As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

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 Mrs G authorised the payments – albeit Mrs G was tricked into making the payments. She thought she would receive a fridge/freezer in exchange for her money and this wasn’t the case.

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 Mrs G in line with the provisions of the CRM Code it has agreed to adhere to and whether it ought to have done more to protect Mrs G from the possibility of financial harm from fraud.

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.

It is for Santander to establish that one or more of the exceptions apply as set out under the CRM Code. The exception relevant to this case is:

- In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without a reasonable basis for believing that: (i) the payee was the person the Customer was expecting to pay; (ii) the payment was for genuine goods or services; and/or (iii) the person or business with whom they transacted was legitimate.

There are further exceptions within the CRM Code, but they do not apply in this case.

The CRM Code also outlines the standards a firm is expected to meet. And it says that when assessing whether the firm has met those standards, consideration must be given to whether compliance with those standards would have had a material effect on preventing the APP scam that took place.

Santander has already refunded 50% of Mrs G's losses for its part – so my decision will focus on whether Mrs G should be refunded the other 50% of her losses.

Did Mrs G have a reasonable basis for belief?

I need to consider not just whether Mrs G believed she was sending money to purchase a fridge/freezer but whether it was reasonable for her to do so. I've thought about the steps Mrs G took to reassure herself about the legitimacy of the transaction(s) and whether it was reasonable for her to proceed with the payments.

It is important to note that there is no standard of care or specific responsibilities placed on customers via the Code, and in any event, the Code does not bind customers. This is something the Lending Standard Board pointed out in its 2022 Review of adherence to the Contingent Reimbursement Model Code <https://www.lendingstandardsboard.org.uk/wp-content/uploads/2022/09/CRM-22-Summary-report-Final-0922.pdf>

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I am not persuaded the concerns Santander has raised about the legitimacy of the transaction Mrs G was making are enough to support its position. I say this because:

I am not persuaded Mrs G needed to make extensive enquiries or actions in the particular circumstances of this case and I think Mrs G took enough care - given the relatively modest payment of £524.

She found the company online and it appeared to have a genuine website at the time. Whilst its presence is no longer visible – it does appear to have been a sophisticated enough of a set up to have also had a genuine telephone number through which Mrs G was able to contact the company and an email address from which Mrs G received confirmatory emails regarding her order.

I have considered Santander's arguments carefully, but I don't find them persuasive. Santander feels that Mrs G ought to have viewed the item in person before purchasing it but I don't think it unreasonable to purchase an item online through what appeared to be a genuine website of a legitimate company at the time. I think this is different to buying an item

from a private seller or a more expensive item, such as a car.

It seems Santander itself was not concerned this might be a scam when Mrs G first called it to explain two payments had been taken by accident. It seems from what has been said that Santander referred Mrs G back to the company and - such was the sophistication of this scam – Mrs G was able to speak to someone at the fake company who assured her the second payment would be refunded in a number of days.

I also don't think the error regarding the first payment which led to the second payment affects Mrs G's reasonable basis for belief. There were plausible explanations around this, and it seems to me this is something that could quite easily have happened in a genuine situation with a genuine organisation by mistake. Reassurances were given to Mrs G by both the fake company and seemingly via Santander's own confirmation in believing this was a legitimate situation by recommending Mrs G wait for it to be refunded within the set/agreed time frames.

I appreciate Mrs G's testimony may have changed from what she said in the call with the bank on 23 January 2023 and to now with the checks which she says she or her son carried out. And I acknowledge that she did blame herself (at one point) during that call for not doing more. I think that is natural in the circumstances – but that doesn't necessarily mean she should (from an objective standpoint) be to blame. Given everything I've said above and overall, I think Mrs G took enough care with a relatively modest payment of £524 (albeit she was tricked into making this payment twice) to say that she had a reasonable basis for believing she was buying a fridge freezer from a genuine seller.

Vulnerability under the CRM Code

I haven't explored this point, as the above would result in me upholding in full under the CRM Code. But I do think it's worth noting that Mrs G was 74 years old at the time and had recently suffered the loss of her husband only two months earlier. She was audibly upset about her loss during the call with the bank on 23 January 2023. She says Santander was aware of this situation as it has been notified shortly after the late Mr G's death. Whilst I don't think this automatically means Mrs G was necessarily vulnerable to falling victim to this particular scam, I don't think Santander has fully explored whether Mrs G is entitled to a full refund under the CRM Code given it knew about this vulnerability.

Putting things right

In order to put things right for Mrs G, Santander UK Plc needs to:

- refund the remaining 50% Mrs G losses – so £524
- pay 8% simple interest on the refund from the date her claim was declined to the date of settlement.

My final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 27 December 2023.

Kathryn Milne
Ombudsman

