

The complaint

Mr and Mrs N complain that Santander UK Plc won't refund them after they fell victim to an email intercept scam.

What happened

Both parties are aware of the circumstances surrounding this complaint, so I won't repeat them in full here. But briefly, both parties accept that in April 2023, Mr N made a payment to who he believed was a flooring firm that had been contracted to complete works for them. Sadly, unbeknownst to Mr and Mrs N at the time, a scammer had managed to intercept a genuine email from the flooring firm and add their account details on to the message, requesting a payment due.

Mr and Mrs N have explained that, by the time they received this intercepted email, they had been in contact with the genuine firm for around six months and had corresponded with them by email, phone and instant messaging. They were also aware a payment was due to the firm for the amount stated. As the fraudsters intercepted a genuine message, the email address it was received from was the genuine address Mr and Mrs N had already been corresponding with. Mr and Mrs N have explained that the parts of the email genuinely written by the flooring company contained information that no one else would have been privy to. Mr N had also assumed that scam emails would need to come from a different email address to the genuine one. Therefore, when Mr N proceeded to make the payment, he had no concerns that the request for payment wasn't legitimate.

The payment was for £11,677.37, which Mr N made through his Santander mobile banking app. Santander has confirmed that when making the payment, it asked Mr N to confirm the reason for payment, which he selected as 'paying for a service.' It advised Mr N would then have seen the following information:

Paying for a service

Criminals can intercept communications between you and businesses you trust. They give you their account details, but this account belongs to the fraudster. If this happens, it means you'll send your money to them and it can't be recovered.

It's important you choose the true reason for this payment and answer all questions honestly. This is so we can help protect you from fraud. If anyone had asked you to lie or mislead the bank, or to choose a different payment reason, this is a scam and you must stop now.

We now need to ask you some specific questions before you send your money.'

Mr N was then asked to confirm where his payment was going, which he confirmed was to pay an invoice or bill. Santander then provided this further information:

You must complete a check on the account details you receive. This is to make sure they're legitimate before sending your money. You must do this even if you've been in regular contact with the business.

Check the account details in person or by calling them. Don't use the number in a message requesting payment. Use a trusted number or one that's publicly available.'

Mr N was asked if he had completed a check on the account details, and answered 'yes'.

Mr N was then asked to provide the details of the account he wished to send money to. A 'Confirmation of Payee' check advised the details partially matched. He was then asked whether he had thoroughly checked the details with the person requesting payment. Again, he answered 'yes'.

Lastly Santander asked if Mr N was comfortable making this payment and confirmed he'd be unlikely to get the money back if the payment was part of a scam. He confirmed he was and the payment was then processed.

It wasn't until the following day when the legitimate firm chased payment and Mr and Mrs N explained what had happened, that they realised they'd been the victim of a scam. At this point, they contacted Santander and raised a fraud claim.

Santander investigated Mr and Mrs N's claim and considered its obligations to provide them with a refund. Santander is a signatory of the Lending Standards Board Contingent Reimbursement Model (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. Santander says one or more of those exceptions applies in this case.

Santander has said Mr N ignored an 'effective warning' when making the payment to the fraudster. It considers Mr N ignored these warnings by stating that he had checked the recipient's bank details when he hadn't. Santander also initially said that Mr N didn't have a reasonable basis for believing he was making a legitimate payment. However, after our investigator provided his view fully upholding the complaint, Santander changed its stance on this point and offered a 50% refund to Mr and Mrs N on the basis that Mr N *did* have a reasonable basis for belief.

Mr and Mrs N declined Santander's offer, so the complaint has been passed to me for a final 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.

Having considered this complaint, I am satisfied that:

- Under the terms of the CRM Code, Santander should have refunded the money Mr and Mrs N lost in full. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- In the circumstances, Santander should fairly and reasonably refund the money Mr and Mrs N lost.

I've carefully considered Santander's representations about whether Mr N ignored an effective warning when making this payment. But they do not persuade me to reach a different view. I appreciate Santander has made attempts to tailor its questioning here and that further advice it provided would've been impacted by Mr N's answers to the questions asked. However, I've also considered the information Santander *did* present to Mr N before asking him these questions. I don't think the warning it provided was sufficiently impactful, or brought intercept scams to life enough to make Mr N question if he was at risk of financial harm.

One of the key reasons Mr N thought that he was speaking to the genuine flooring company was that the email he received included details only that firm would know and it was received from the firm's legitimate email address. I don't think the warning Santander provided went far enough in explaining how an intercepted email might look (and how well hidden the interception can be, including being received from the genuine email address, alongside a

genuine message) and as a result, the warning hasn't covered the key hallmarks of this scam and therefore has lost its impact. Similarly, while the warning advises Mr N to confirm the account details by phone or face to face, without the additional information on how intercepted emails can appear, I think it's understandable why Mr N didn't feel he needed to conduct these additional checks, as the potential risk he was facing was less apparent.

Therefore while I understand why Santander considers its ability to provide an effective warning was hindered by the answers Mr N gave – and while I appreciate this is a finely balanced case – overall I think Santander didn't go far enough in its initial warning to Mr N regarding these types of scams to explain the potential dangers and therefore Mr N shouldn't be held liable for his losses on this basis.

My final decision

For the reasons I've explained, my final decision is that I uphold Mr and Mrs N's complaint against Santander UK Plc. I require Santander UK Plc to:

- Refund the £11,677.37 Mr and Mrs N lost to the scam in full
- Pay 8% simple interest per year, from the date Santander declined Mr and Mrs N's claim under the CRM Code to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 4 March 2024.

Kirsty Upton
Ombudsman