

## The complaint

Miss T complains that Santander UK Plc did not refund a series of payments she lost to a scam.

## What happened

Miss T made a series of payments between October 2019 to November 2021, to two separate individuals who were known to her. For the purposes of this decision, I will call them 'J' and 'A'. The payments were for various trips centred around wedding celebrations for J. It was explained that A had a connection in the travel industry that I'll call 'C' who could obtain holidays at reduced costs, and the trips were being organised through them. The payments Miss T made were as follows:

Date	Amount	Payee
1 October 2019	£100	J
15 November 2019	£150	J
19 December 2019	£60	A
14 February 2020	£150	J
14 April 2020	£50	J
5 August 2021	£100	A
6 August 2021	£700	J
17 November 2021	£25	J

Miss T and other individuals invited to the wedding were informed due to various issues the destination of the initial celebrations had to be changed and postponed. But all of the deposits paid for the initial location could be transferred to the second so they wouldn't lose them. They were then told the second destination had to be cancelled. Miss T did receive a partial refund of £900, but there was still £435 remaining that had not been refunded to her.

Eventually, it was explained that C did not exist, and A had invented them in order to appear legitimate but in reality they were 'organising' these holidays themselves and would take a commission when doing so. Miss T became aware of other individuals who had paid either A or J for holidays and received no service as well as either none or only partial refunds.

Miss T raised a scam claim with Santander who said that as Miss T had paid friends that she had an ongoing relationship with, the transactions did not fall under the scope of the voluntary Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. This

is because they deemed it to be a civil matter and not fraud.

Miss T disagreed with this and referred the complaint to our service. Our Investigator looked into it and explained that, having reviewed the accounts of both J and A, they could not agree that they never intended to supply the holidays to Miss T. Because of this, they did not agree that the transactions were covered under the CRM Code which only applies when the supplier's purpose for the payment was fraudulent.

Miss T did not agree with the findings. In summary, she felt Santander did not at any point investigate her claim in detail. She pointed out that she had provided evidence A had falsely invented C and that other individuals had received full or partial refunds from their banks relating to holidays purchased through A and J. And that the police had started an investigation into the matter.

As an informal agreement could not be reached, 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 done so, I agree with the Investigator for largely the same reasons. I'll explain why in more detail.

Firstly, it should be noted that a number of other payments were sent to a third individual for holidays relating to a separate wedding, but it has been explained and accepted that these will not be considered within this decision.

It isn't in dispute that Miss T authorised the payments that left her account. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transactions. But she says that she has been the victim of an Authorised Push Payment (APP) scam and that J and A's intent from the start was to deceive her.

Santander is a signatory to the voluntary CRM Code, which provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I have set this definition out below:

*...a transfer of funds executed across Faster Payments...where:*

*(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*

*(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

*"This Code does not apply to:*

*b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the*

*Customer is otherwise dissatisfied with the supplier.”*

In other words, the CRM Code isn't a general protection for customers against non-receipt of goods or services. It only applies if it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met. So, I need to decide whether Santander acted fairly, when concluding that this amounted to a civil dispute and not a scam. I find that they did, and I'll explain why.

I have reviewed all of the evidence Miss T has provided, as well as Santander's business file and the statements for A and J's various accounts. I cannot investigate A or J as individuals and I am limited to the information available to me.

I've reviewed a number of messages between groups involved in the holidays. Including a message from A to a group which appears to be her 'confessing' what had happened. In this, she explained things had gotten out of control but she had intended to provide customers with the holidays she'd promised them but there were issues with not being able to meet the cost of the holidays. Because of this, she made more offers to cover those costs. On balance, having reviewed this, I don't think this shows A had no intention of providing the services promised to Miss T.

I've reviewed A and J's various statements. As the third-party statements contain sensitive information, for data protection reasons I am unable to share the details of what I've seen. Having reviewed all of this evidence, I am not satisfied that it was J or A's intention to defraud Miss T and not provide the services in question. So, I don't agree these specific transactions meet the definition of an APP scam as set out by the code.

While I do not doubt what Miss T has said about other individuals receiving partial or full refunds, I am only able to consider this particular case and these specific payments. And having done so, as set out above, I have not found that it was never A or J's intention to supply the services. While I appreciate that the police began an investigation, there has been no conclusion that we have been made aware of, so I am unable to take any findings into consideration at this time. And unfortunately, we cannot keep complaints open indefinitely to wait for a conclusion of their investigation.

I've taken on board Miss T's comments that Santander did not carry out a full investigation when she raised her scam claim initially and I agree they did not review the evidence. However, when the complaint was brought to our service they were supplied with the relevant evidence, and they came to the conclusion that this did not meet the definition of an APP scam. And I therefore think it's more likely they would have reached the same conclusion had they carried out a thorough investigation at the first stage. So, I don't think Miss T has been disadvantaged as a result of this.

On balance, having carefully reviewed everything available to me, I do not think these particular transactions meet the definition of an APP scam as set out in the CRM code. So, Miss T is therefore liable for these transactions and I don't direct Santander to reimburse her.

### **My final decision**

I do not uphold Miss T's complaint against Santander UK Plc,

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 22 April 2024.

Rebecca Norris  
**Ombudsman**