

## **The complaint**

Miss S is unhappy that Santander UK Plc has decided not to refund her money she lost, to what she believed was an Authorised Push Payment (“APP”) scam.

## **What happened**

The background to this complaint is well known to both parties and our Investigator has set out a detailed background to the events in her view. So I won’t repeat everything again in detail here, but in summary I understand it to be as follows.

Miss S made a number of payments to an individual, who I’ll refer to as “A”, on the understanding that they were going to organise the booking of a holiday and purchase of goods for her through a well-known travel company and department store. Miss S has said that she believed everything to be genuine as she had known A for a number of years and had previously been on trips that had been arranged through A. But Miss S, now believes the provision of the earlier trips was a tactic A used, in order to gain trust and entice her, and others, into booking more expensive trips.

Miss S has said that A is being criminally investigated by the police and there are a number of other consumers who have similar claims. She believes this is an indication that A wasn’t acting legitimately. Alongside this, Miss S has said that she’s aware that Santander and other payment providers have refunded other customers for their losses.

Furthermore, Miss S has said that A created fake persona’s and claimed that the holidays were ATOL and ABTOL protected. As well as this Miss S has said that, aside from not fulfilling promises, she believes A carried out other criminal activities which she believes showed a clear picture of the depths of what she believes was A’s fraudulent behaviours.

Miss S raised the matter with Santander. It investigated Miss S’ complaint but didn’t think it should be upheld. In summary, this was because it said that what had happened would be classed as a civil dispute, rather than an Authorised Push Payment (APP) scam. Therefore Miss S was not entitled to a refund.

Unhappy with Santander’s response, Miss S brought her complaint to this service. One of our Investigator’s looked into it, but didn’t think the complaint should be upheld. In summary, it was our Investigator’s view that based on what she’d seen she didn’t think it was most likely that A had set out to scam Miss S – so she didn’t think she could fairly ask Santander to provide a refund.

Our Investigator considered the recipient bank accounts as part of her investigation. She explained she couldn’t provide detail about those accounts due to data protection reasons - as it related to another person’s bank account. But she was satisfied that what she found supported a finding that there was not enough convincing evidence that Miss S had been the victim of an APP scam.

Miss S didn't agree with our Investigator's view, in summary she maintained that she'd been the victim of a scam. As agreement couldn't 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The starting position in law is that Miss S will generally be considered liable for authorised payments. It's accepted that she authorised the payments in dispute and so she is liable for them in the first instance. However, Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Under that Code, firms are expected to reimburse customers who fall victim to fraud, subject to a number of exceptions.

However, the CRM code is only relevant if I'm persuaded Miss S did fall victim to a fraud. The Code specifically excludes certain types of dispute. It says:

*"This Code does not apply to ... 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."*

So, taking into consideration the above, I must first decide whether Miss S has likely been the victim of fraud or not. And whether Santander acted fairly, when concluding what had happened in the circumstances of this case amounted to a civil dispute and not an APP scam. Having thought very carefully about Santander's actions, I think it did act fairly in reaching this conclusion. I do appreciate how disappointing this will be for Miss S and I don't underestimate her strength of feeling, but I don't think I can fairly say Santander should reimburse her. I'll explain why.

In order to be persuaded on balance that Miss S has been the victim of an APP scam I need to look to the definitions set out in the CRM code, which say;

**DS1(2)**

*(a) APP Scam Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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.*

And the FCA handbook glossary which says

*A transferred funds to B for what they believed were legitimate purposes but which were in fact fraudulent*

Looking to these definitions I firstly need to consider the purpose of the payment and whether Miss S thought this purpose was legitimate. Which I'm satisfied she did. Miss S has explained that she believed the payments she was making were for holidays and goods. Then I need to consider the purpose the recipient (A) had in mind, at the time of the payments, and whether this was broadly in line with what Miss S understood to be the purpose of the payment.

In the circumstances of this case, I can see that A had offered, and at least in some cases provided, holidays not only to Miss S, but to others as well and seemingly for quite some time, with many people receiving what they had paid for. I'm also aware that this extended further than just holidays, with A also organising the provision of tickets for other events.

Obviously, I cannot know for sure what was in the mind of A at the time these payments were received. As a result, I must infer what her intentions were based on what the available evidence, that I have had access to, tells me. Having considered this I don't think its more likely than not that A set out with an intent to scam Miss S. I say this because;

- A did provide holidays and tickets to other events and from what I've seen, Miss S (and others) received some of these services. Which supports that A's intended purpose was to provide what was paid for.
- I have reviewed the receiving account statements. Whilst I can't go into detail, for data protection purposes, I can see that multiple payments across an extended period of time, relate to the activity A claimed to be making. There's only so much weight I can place on this as I can't question A or interrogate A's actions, payments or contracts etc. But it doesn't persuade me that A took Miss S' payment with intention not to provide the services promised.
- I'm aware that A sent messages to others to say what had been happening. It shows A explains that things had spiralled but that she'd intended to provide people with the holidays she'd promised them and that they had booked. A's messages talk about not being able to meet the cost of the holidays so she offered more to cover those costs. This, on the face of it, doesn't show that A had no intention of providing the services promised.
- Miss S has said that A created fake personas and claimed to be ATOL and ABTOL licensed and also mentions other activities that she believes shows A's fraudulent behaviours. But I haven't seen persuasive evidence that links A to these claims. But even if I had, this again doesn't go to the purpose of the payment being different to the one Miss S had thought when making the payments. It could be an indication of misrepresentation, or false or misleading advertising, used to enticed consumers to use A's service. But if the holidays and services were ultimately provided or at least intended to be provided then it's not enough to say this was an APP scam.
- Holidays and events can be cancelled, goods not received and money lost for a number of reasons. I do accept, one reason could be that A was operating a scam.

But I'm mindful there are also other explanations and, in the individual circumstances of this case, the evidence doesn't lead me to conclude that it's more likely than not that A set out with the intent to scam. It's at least as likely that the root cause here was incompetence or A chaotically mismanaging what she was doing and failing to meet her obligations, rather than it being a clear indication of a fraudulent intent. In such circumstances, Miss S may have a civil claim for damages for breach of contract against A, but it wouldn't entitle her to have her losses reimbursed by the bank under the CRM Code.

I accept Miss S has lost a significant amount of money, has been let down badly and has not received what she was expecting from A. But that in and of itself is not enough to say she's been the victim of an APP scam.

I'm mindful that there is an ongoing Police investigation, but it's my understanding that no charges, at present, have been brought against A and there's no guarantee the police investigation would lead to a clear finding that Miss S was the victim of an APP scam. It is, of course, possible that when the Police investigation has concluded - new material evidence may come to light about A's actions and intentions, which might make a difference. But I have to decide the case on the facts and information before me. And currently I'm not able to conclude there is convincing evidence that Miss S has been the victim of an APP scam.

Whilst the conclusion of a police investigation would likely be helpful, I cannot keep the complaint open for an indefinite period of time, whilst A is investigated by the police. It's my role to review if Santander considered Miss S' scam claim, correctly under the CRM code, at the point it was raised. And I'm satisfied that it did.

If new material information does come to light, at a later date, then Miss S can bring a new complaint to Santander. But I'm satisfied, based on the available evidence to date, that I have seen and been presented with by all parties, that this is a civil dispute. And Santander's decision under the CRM code was therefore correct.

As Santander didn't need to consider this as an APP scam then it didn't need to go on to contact the recipient account provider. It didn't need to intervene with the payment either, and even if it had I don't think it would have made a difference. I say that as A had provided Miss S with services previously and so, I don't think she would have had any reason to not think that wouldn't be the case when she made these payments.

I'm enormously sympathetic to the position Miss S finds herself in and I am sorry to have to deliver this news to her. She has clearly been very badly let down. But, for the reasons I have explained, I cannot fairly say that Santander should fairly and reasonably be held responsible for refunding her the money she paid.

### **My final decision**

My final decision is that I don't uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 24 April 2024.

Stephen Wise  
**Ombudsman**