

The complaint

Mrs and Mr R are unhappy that Santander UK Plc (“Santander”) has decided not to refund them after they say they were the victims of a scam.

What happened

Mrs and Mr R made multiple payments to an acquaintance of theirs, who for the purposes of this decision I will refer to as “S”, on the understanding she was booking holidays and other trips for them and their family.

The facts of this case are well known to both parties. So, I won’t repeat them all in detail again here. However, in summary:

- Not all of the payments made by Mrs and Mr R to S are disputed, some services were provided. But Mrs and Mr R now feel that this was a tactic used by S to gain trust and to entice further larger payments from them and others as time went on.
- S did return some funds to Mrs and Mr R which they are not disputing as part of this complaint.
- Mrs and Mr R also explain that S did book a replacement trip when the one agreed upon did not go ahead as planned.
- S is being criminally investigated by the Police and there are a number of other consumers who have similar claims. The case is currently being reviewed by the Crown Prosecution Service (“CPS”). Mrs and Mr R say this is an indication S wasn’t acting legitimately.
- S told Mrs and Mr R that she was able to obtain cheap holiday packages via her friend, who worked for a well-known holiday provider and received a staff discount. Mrs and Mr R say it has since come to light that S made up this person and no legitimate discounts were available.
- Mrs and Mr R say S targeted friends and family, abusing a relationship of trust to gain their money and that she partially fulfilled promises in order to gain more victims.

Santander decided not to refund Mrs and Mr R’s losses. It said the matter was a civil dispute rather than an Authorised Push Payment (“APP”) scam and therefore Mrs and Mr R were not entitled to a refund under the Contingent Reimbursement Model (“CRM Code”) or otherwise.

Unhappy with this outcome Mrs and Mr R brought their complaint to our service and one of our investigators looked into things.

The investigator concluded that there wasn’t enough convincing evidence to show that, on balance, Mrs and Mr R had been the victim of an APP scam. He concluded that Mrs and Mr R and other family members had previously interacted with S and received the services they paid for. Whilst Mrs and Mr R didn’t get the later holidays/trips they had agreed, in this instance, that wasn’t enough to say they’d been the victim of an APP scam. The investigator wasn’t persuaded that S had set out with the intention to defraud Mrs and Mr R from the

outset. He said that many of S's actions, including the refund of some money and part receipt of goods, didn't support a finding that S never intended to provide the services at all.

The investigator considered the recipient bank accounts as part of his investigation. He explained he couldn't provide any detail about those accounts due to data protection reasons - as they relate to another person's bank account. But he was satisfied that what he found supported a finding that there was not enough convincing evidence that Mrs and Mr R had been the victims of an APP scam.

Mrs and Mr R didn't accept the investigators findings and asked for an ombudsman to review the complaint. They pointed out that S had taken money from numerous victims who hadn't got what they paid for and she had handed herself in to the Police. Mrs and Mr R also pointed out that the Police, after completing an investigation, had now taken the matter to the CPS.

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.

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.

It isn't in dispute that Mrs R authorised the payments that left this account. Therefore, the starting position, in line with the Payment Services Regulations 2017, is that Mrs and Mr R are liable for the transactions in the first instance. However, that is not the end of the story.

The CRM Code

Santander is a signatory to the voluntary "CRM Code". This is a scheme through which victims of APP fraud can sometimes receive reimbursement from the banks involved. But the CRM 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."

It's important for me to highlight here that I am not deciding a dispute between Mrs and Mr R and S. My role is limited to deciding the dispute between Mrs and Mr R and Santander. So, I need to decide whether Santander acted fairly, when concluding that Mrs and Mr R's circumstances amount to a civil dispute and not an APP scam.

Overall, I'm satisfied that it did. I'll explain why in more detail below.

Have Mrs and Mr R been the victims of an APP scam?

In order to be persuaded on balance that Mrs and Mr R have been the victims of an APP scam I need to look to the definitions set out in the CRM code. At:

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.

The FCA handbook glossary goes on to say:

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

When looking to these definitions, I firstly need to consider the purpose of the payments made and whether Mrs and Mr R thought these purposes were legitimate. I'm satisfied they did. I have read a number of the messages shared between Mrs R and S discussing the payments and it's clear to me that Mrs R genuinely believed that she was making payments to S for short breaks, holidays and other ticketed events. Mrs R was making these payments on behalf of herself and Mr R and on behalf of other family members as well.

I then need to consider the purpose, S, the recipient, had in mind at the time the payments were made and whether this was broadly in line with what Mrs and Mr R understood the purpose to be.

Here there is evidence that S had offered not only Mrs and Mr R and their family discounted holiday bookings, but others as well. It appears that S had done so for quite some time and many people received what they paid for. This was not limited to holidays but also other types of ticketed events.

There will of course be limited information available to me regarding S's intended purpose for Mrs and Mr R's funds. And again, I must stress that I am not investigating S as individual. There is only certain information both I and the investigator have had access to in the course of this investigation. However, what I have seen is:

- Reference to a message sent by S “confessing” what had been happening. I understand that in this message, S sets out that things had “spiralled” out of control but she'd intended to provide the holidays she'd promised. I understand S's message refers to not being able to meet the cost of the holidays so she began offering more to cover those costs. And so, whilst I have thought carefully about Mrs and Mr R's arguments that S handed herself into the Police, this message, on the face of it, doesn't show that S had no intention of providing the services promised from the outset.
- 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 S claimed to be making. There's only so much weight I can place on this as I can't question S or interrogate S's actions, payments or contracts etc. But it doesn't persuade me that S took Mrs and Mr R's payment with the intention not to provide the services agreed.

- S did provide holidays and ticketed event services to people and some of those services were provided and received. Which again supports that S's intended purpose was to provide what was paid for.
- Whilst Mrs and Mr R have told us that S created a fake friend who was offering these services, and I have seen S make reference to this person in the messages shared between Mrs R and S, this still doesn't mean that the purpose of the payments was different to the one Mrs R had in mind when making the payments. It could be an indication of misrepresentation, or false or misleading advertising, used to entice consumers to use S'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.

Whilst I do not doubt that Mrs and Mr R have not got what they paid for and that they have suffered a loss, that in and of itself is not enough to say they have been the victims of an APP scam. Mrs and Mr R may well have a claim in law against S. But here I have to decide Mrs and Mr R's claim under the CRM code.

I say the above with due regard to the fact that Mrs and Mr R have been able to provide evidence to this service that the Police, having completed their investigations into S, have submitted the case to the CPS. My understanding is that The CPS is now looking into if it can bring a formal charge against S. Once this has concluded and if evidence becomes available at a later date which shows specific charges were brought against S, this might provide new material evidence about S's actions and intentions and the outcome here might be different. But, as it stands, I have to decide the case on the facts and information that I currently have available to me. And I'm currently not able to conclude there is convincing evidence that Mrs and Mr R have been the victims of an APP scam.

And so, whilst I acknowledge the arguments put forward by Mrs and Mr R about the on-going Police investigation, there's no guarantee this will lead to a clear finding that Mrs and Mr R were the victims of an APP scam. And, currently, it's my understanding that no charges, at present, have been brought against S. I also appreciate that the conclusion of a Police investigation would likely be helpful but I cannot keep the complaint open for an indefinite period of time. It's my role to review if Santander considered Mrs and Mr R'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 comes to light, at a later date, then Mrs and Mr R can bring a new complaint to Santander. But I'm satisfied, based on the available evidence at this time, that this is a private civil dispute between Mrs and Mr R and S. And Santander's decision under the CRM code was therefore reasonable.

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 payments at the time they were being made either, and even if it had, I don't think it would have made a difference given that S had provided Mrs and Mr R with services previously and they had no reason to think that this wouldn't be the case when they made these payments.

Finally, I want to acknowledge Mrs and Mr R's arguments that at least one similar case to theirs has been upheld by this service. I need to stress here that each case is assessed on its own merits and for the reasons I've set out above, I am not satisfied that it would be fair and reasonable to recommend that Santander refund Mrs and Mr R based on the particular circumstances of their case, as I've set out them out above.

I've seen no other reason to make an award for redress, and I'm satisfied that Santander correctly considered Mr and Mrs R's claim.

My final decision

For the reasons set out above, I do not uphold this complaint.

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

Emly Hanley Hayes
Ombudsman