

## The complaint

Mr and Mrs H complain that Santander UK Plc won't refund them the money they lost after they fell victim to an Authorised Push Payment (APP) scam.

## What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, I understand it to be as follows.

In August 2023, Mr and Mrs H were the victims of a safe account scam. They were contacted by a scammer pretending to be from Santander. The scammer tricked Mrs H into believing their money was at risk and that she needed to safeguard it. Believing them to be genuine, Mrs H followed the fraudsters instructions and made the following payments, totalling £24,450, from the joint account her and Mr H held with Santander;

21 August 2023	£14,650
21 August 2023	£9,800

Mr and Mrs H reported they'd been the victim of a scam to Santander. Santander considered the case under the provisions of the Contingent Reimbursement Model Code ("CRM Code"), which requires its signatories, of which Santander is one, to reimburse APP scams like this one in all but a limited number of circumstances.

Santander concluded that liability should be shared and it agreed to refund Mr and Mrs H half of the money that was lost. That being £12,225, half of the £24,450 that was sent to the fraudsters. In summary, this was because Santander thought it could have done more, but it also didn't think Mr and Mrs H had carried out any checks before making the payments.

Alongside this, Santander was also able to recover £7,325, being half of the £14,650 payment, from the beneficiary account (the account to which the payment was made). So overall, £19,550 was returned to Mr and Mrs H (made up of the £12,225 reimbursed by Santander and the £7,325 recovered from the beneficiary account). This meant that Mr and Mrs H had got all of their money back from the first payment (£14,650), but still had a remaining loss of half of the second payment.

Unhappy with Santander's response, Mr and Mrs H brought their complaint to this service. One of our Investigator's looked into things and initially recommended that Santander should return the remaining loss to Mr and Mrs H. In summary, this was because although she didn't think Mr and Mrs H had a reasonable basis for belief when making the payments, she didn't think Santander had done all it could to try and recover the money that had been sent and had missed an opportunity to recover some of the £9,800 payment. However, following her initial view our Investigator received evidence from the beneficiary banks to show that no funds remained to be recovered. In view of this our Investigator's position changed and she didn't think Santander were liable to refund Mr and Mrs H their remaining loss.

As Mr and Mrs H didn't agree with our Investigator's view the complaint has been passed to me for a decision. I wrote to Mr and Mrs H and informally explained my thoughts as to why I

didn't think Santander were liable to refund them. But as Mr and Mrs H remain unhappy, it's now appropriate for me to formalise my findings and issue a decision on this complaint.

### **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 sorry to hear that Mr and Mrs H have been the victims of a cruel scam. I don't doubt that these events have had a significant impact on them. But I'm afraid, looking at all that's happened, I'm not going to be able to say Santander should be responsible for refunding their remaining loss. I'll explain why.

My reasons for this are broadly the same as those that our Investigator set out in her view.

I can see that the payments were made, with the intention of keeping Mr and Mrs H's money safe, following them being in the belief that it was at risk from fraudsters. They thought that the money was being transferred, but that it would be refunded to them.

As mentioned above, Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of APP scams, like the one Mr and Mrs H fell victim to, in all but a limited number of circumstances. Under the CRM Code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made; or
- 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: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

Santander has acknowledged, at least in part, that it is liable. It conceded that it didn't provide a warning in connection with these payments and as mentioned, on that basis, it agreed to refund 50% of the two payments. However, it continues to argue that the second exception set out above is applicable to this case – i.e., that Mr and Mrs H made these payments without a reasonable basis for believing they were in response to a legitimate request. I've considered its arguments carefully and I agree with that conclusion.

Based on what I've seen, the scammer doesn't appear to have needed to do much to persuade Mr and Mrs H that they were genuinely from the bank. I understand they knew Mrs H's name, but it doesn't sound as if they knew any information that a person might only expect their bank to know. I also understand that the scammer didn't attempt to 'spoof' a genuine Santander number – something which is a commonly occurring feature of such scams.

The caller didn't know any personal information or run through any security checks which you would typically expect when receiving or making a call to/from your bank. I can also see that the fraudster asked Mrs H to download an 'Action Fraud' app, which was called Any Desk – but when opening that App there isn't any indication that the purpose of it is fraud related. Alongside this the fraudster asked Mrs H to send the payments to two separate personal accounts – without offering or being asked for any plausible explanation as to why. Which I think ought to have also given them some cause for concern.

I'm mindful that, taking any of the individual factors above in isolation, they may not have been enough to have prevented Mr and Mrs H from proceeding to make the payments. But when taken collectively and considering the specific circumstances of this case and the factors in the round, on balance, I think that there was enough going on and sufficient red flags that they ought reasonably to have been concerned that things weren't as they first seemed. Overall, I'm not persuaded that the payments were made with a reasonable basis for believing that they were in response to a genuine request from the bank.

I'm mindful that our Investigator's initial view recommended that Santander should return the remaining loss to Mr and Mrs H – this was because she didn't think Santander had done all it could to try and recover the money that had been sent. However, following that view our Investigator received evidence to show that no funds remained to be recovered – sadly, this is quite typical with scams like this, where on receipt of a victim's money the fraudsters move the money again, seemingly to avoid these types of attempt at recovery.

I understand that it will have been disappointing for Mr and Mrs H to have initially received a view indicating that they would have their remaining loss returned. But it wouldn't be fair and reasonable for this service to hold a firm liable, when evidence is received that demonstrates there has been no failing on its part. So the Investigator was correct in changing her position and my decision here supports that.

I don't say any of this to downplay or diminish the fact that Mr and Mrs H have fallen victim to a cruel and cynical scam. I have a great deal of sympathy for them and the position they have found themselves in. However, my role is limited to looking at the actions and inactions of the bank and I'm satisfied it doesn't need to refund any more than it has.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 6 December 2024.

Stephen Wise  
**Ombudsman**