

The complaint

Mrs C is unhappy Santander UK Plc ("Santander") did not reimburse the money she lost when she fell victim to an impersonation scam.

What happened

The details of this complaint are well known to both parties. So, I won't repeat them in detail again here. However, in summary:

Mrs C has been the victim of a scam. She was called by someone who purported to be from HMRC but who we now know to be a scammer.

The scammer called Mrs C and told her she'd been a victim of identity theft. She was told that several bank accounts had been opened in her name which were now being used for money laundering and drug trafficking purposes. Mrs C was told she was under investigation by the Police and if she didn't cooperate she would be arrested. Mrs C was then directed to the Ministry of Justice's website and directed to its telephone number. In order to 'prove' the scammer was who he said he was, he then hung up and called Mrs C back from the number she had seen on the screen.

Mrs C suffers from severe anxiety which is linked to some past traumatic experiences. When she received the call from the scammer, she immediately had a panic response. She was crying, unable to breathe and / or think straight. Mrs C has told us she was on the telephone for some time but during the call, she was unable to fully comprehend what she was being told or asked to do. Because of this, she has struggled to recall some of the details of what happened.

During the call, the scammer was able to persuade Mrs C to take some pictures of herself and set up an account with a third-party money transfer service - which I will refer to as "W" - using a third-party screensharing app downloaded to her device.

Mrs C was ultimately persuaded to make a number of payments from a number of her accounts in order to show that she was co-operating with the investigation against her. In total, she made the following payments from her Santander account:

Payment	Date	Time	Type of transaction	Amount
1	12/10/2023	13:54	Open Banking to W	£1,950
2	12/10/2023	14:07	Open Banking to W	£1,890
3	12/10/2023	14:19	Faster Payment to Mrs C's business account	£2,000
4	12/10/2023	14:23	Open Banking to	£1,540

			W – blocked by Santander	
5	12/10/2023	14:58	Debit card payment to W	£1,546.47

After making the above payments, Mrs C went to pick up her son from school and told a friend about what had happened to her. Mrs C's friend said she thought she'd been the victim of a scam. Mrs C and her friend then went directly to the Police station to report what had happened and Mrs C also contacted Santander.

Santander declined to offer Mrs C a refund of the amount she had lost. It said Mrs C's Santander account wasn't the point of loss – her funds had been lost when they were removed from the accounts they had been transferred on to. Santander directed Mrs C to contact W in order to request her money back.

Unhappy with Santander's response, Mrs C brought her complaint to this service and one of our Investigators looked into things.

The Investigator who considered the complaint recommended Santander refund Mrs C all of the payments in full apart from payment 3 - taking into account that payment 4 wasn't successful. They said that the first two payments should be refunded under The Lending Standards Board Contingent Reimbursement Model (the "CRM Code") as Mrs C was vulnerable at the time of the scam. They also thought Santander should've prevented the last payment from leaving Mrs C's account at the time of the scam and so it was reasonable for Santander to be held liable for it now. The investigator didn't think Santander needed to provide a refund of payment 3 as this wasn't covered by The CRM Code.

Mrs C agreed with our Investigators opinion, but Santander did not. It said it didn't agree that the first two payments were covered by The CRM Code and so it wasn't fair to apply its provisions to them. In terms of the last payment, it said it had an obligation to process this payment at Mrs C's request and our position on this was contrary to relevant case law. To support its position, Santander quoted the judgment set down in the recent Supreme Court case of Philipp vs Barclays Bank Plc UK [2023] UKSC 25.

Santander's arguments did not change our Investigators mind. And, as an agreement could not be reached, the case 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, 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 be good industry practice at the time.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

There's no dispute here that Mrs C authorised the payments herself. However, where a customer makes a payment as a consequence of the actions of a fraudster, it may

sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether Santander should have reimbursed Mrs C in line with the provisions of the CRM Code it has signed up to and whether it ought to have done more to protect Mrs C from the possibility of financial harm from fraud.

Payments 1 & 2 – are they covered by the CRM Code?

The involvement of a genuine intermediary (in this case, the account at W set up in Mrs C's own name) does not exclude the possibility of the CRM code applying. The CRM code doesn't require the initial recipient of a payment to be an account owned by and for the benefit of the scammer. And in this case, I'm persuaded the funds were under the control of the scammer at the point they arrived at Mrs C's W account.

I understand Santander's arguments that Mrs C had facilitated the setup of this account under the scammers instructions and therefore she must've known its login details and have had access to it. I agree, having listened to recordings of the calls where Mrs C describes what happened to her, that she was mostly likely coached by the scammer into setting up the W account herself. However, whilst Mrs C may well have set up the account, I'm not persuaded she had any real comprehension as to what was taking place. She had no idea what password had been used to set up the account when W asked for it later.

Overall, it seems most likely to me that the scammers needed Mrs C's input in setting up the W account but then took it over once the setup had been completed. It was the scammers, not Mrs C, who were removing the money once it was transferred to W and it seems likely to me that they had control of the account and updated its login details. As I've referred to above, Mrs C had no access to this account when she spoke with W a short time later. And so having taken everything into account, I'm satisfied that by the time Mrs C had transferred the funds out of her Santander account, they were in the control of the scammers. And I'm satisfied that anything that took place on the W account was completed by the scammers, not Mrs C. The money was out of Mrs C's control and so the payments (Payments 1 and 2) made here are covered by the provisions of the CRM Code.

Should Santander refund payments 1 & 2 under The CRM Code

So having been satisfied that payments 1 & 2 are covered by The CRM Code, I've then gone on to think about whether they should reasonably be refunded under its provisions.

As I've said above, there's no dispute here that Mrs C was tricked into making the payments herself. She thought she was securing her funds as part of an investigation into her accounts, and this wasn't the case. But this isn't enough, in and of itself, for Mrs C to receive a full refund of the money under The Code.

Under the CRM Code the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mrs C. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions. I haven't outlined them here as they are not relevant in this particular case.

Section R2(3) of The Code requires firms to assess whether a customer is vulnerable to the APP scam they fell victim to. It says:

“A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered. This should be assessed on a case-by-case basis.”

The CRM Code also says that in these circumstances, the customer should be reimbursed notwithstanding the provisions in R2(1), and whether or not the firm had previously identified the customer as vulnerable.

As this provision under the CRM Code might lead to a full refund, notwithstanding the provisions in R2(1), this is the starting point for my decision in this particular case.

The Code says vulnerability should be considered on a case-by-case basis. It also outlines some factors for firms, such as Santander, to consider. Whilst I consider the factors to be indicators of potential vulnerability and a non-exhaustive list, I am persuaded that it is readily apparent from what Mrs C has said of her personal circumstances at the time of the scam, that she was vulnerable and, in my view, particularly vulnerable to the scam she fell victim to. And I don't think it would be reasonable for Santander to have expected Mrs C to be able to protect herself from this particular scam, especially given its timing and nature.

From the information Mrs C has provided to both this service and Santander, it's clear that she was experiencing a particularly difficult time in regard to her mental health. Mrs C had been diagnosed with severe anxiety which caused panic attacks and seizures which were linked to the traumatic death of a close family member and a particularly traumatic birth experience. I want to thank Mrs C for being so open and honest about her mental health struggles. I know this must've been difficult and upsetting for her to have to talk about.

Mrs C has told us she suffered a full nervous breakdown in the months leading up to the scam, was seeing a therapist and her GP and was also taking medication for her condition. One of the symptoms of Mrs C's condition was an extreme fear of being separated from her young son. And I'm satisfied this meant Mrs C was particularly triggered by the threats the scammer put to her - leaving her unable to think straight or question or comprehend what she was being asked to do. Mrs C was deceived into thinking that the only way she could protect herself was to follow the scammers instructions.

I'm persuaded Mrs C was particularly susceptible to detriment at the time of the scam and in my view, Mrs C was significantly less able to represent her own interests or apply logic to the information that was being presented to her whilst suffering from what appears to be an intense panic response during her telephone conversation with the scammers. And it's clear the scammer exploited Mrs C's anxiety. Her state of mind coupled with her desire to protect herself from harm meant she wasn't in a position to protect herself from falling victim to this scam. And I'm not persuaded that Mrs C could've readily identified that what she was being told might not be true. And so, for these reasons, I don't think it would be reasonable to have expected Mrs C to protect herself from becoming the victim of this particular scam given all of the circumstances.

As a result, I find Mrs C was vulnerable to this particular APP scam and I think Santander should have identified that when it considered her claim.

It is also the case that if a customer meets the definition of vulnerability set out under the CRM Code that exceptions to reimbursement (such as reasonable basis for belief, ignoring effective warnings and gross negligence) do not apply. So, I haven't gone on to consider whether any of the exceptions under the CRM Code would have (otherwise) applied in this

case. Overall, I'm satisfied Santander should refund Mrs C the first two payments under the provisions of the CRM Code in full.

Payment 3

I don't intend to comment on payment 3 in any great detail as part of this decision as both Mrs C and Santander both agree that this payment isn't covered by the CRM Code and that Santander couldn't have done anything to prevent it from leaving Mrs C's account at the time of the scam. As there is no disagreement surrounding this payment, I don't intend to address it any further here.

Payment 5

As I've said above, in broad terms, the starting position in law is that Santander is expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (the PSR's). And (as Santander has referenced) the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:

The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.

The express terms of the current account contract may modify or alter that position. For example, in *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud, but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.

Santander's general account terms and conditions gave it rights (but not obligations) to:

- Refuse any payment instruction if it reasonably suspects it relates to fraud or any other criminal act.
- Delay payments while fraud prevention checks take place.

It explained it might need to contact the account holder if Santander suspects that a payment is fraudulent.

So, in accordance with Santander's own terms and conditions, it could therefore refuse payments, or make enquiries, where it suspected fraud.

Whilst the current account terms did not oblige Santander to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Santander from making fraud checks before making a payment. And, whilst Santander was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good practice at the time, it should fairly and reasonably have been on the look-out for the possibility of APP fraud and have taken additional steps, or

made additional checks, before processing payments in some circumstances – as in practice all banks, including Santander, do (and as Santander did in fact do in this case when Mrs C attempted Payment 4).

The detailed reasoning for this has been set out in substantial detail in recent decisions, so I don't intend to repeat it here. But, overall, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – as in practice all banks do (and Santander did in fact do for the payment prior to the one now under discussion here).
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

Should Santander have fairly and reasonably done more before it processed payment 5, and would that have prevented the loss?

I'm satisfied Santander should've had concerns about this payment and it should've contacted Mrs C to discuss it before it was allowed to leave her account. I say this because this was the 5th high value payment that had been attempted in just over an hour. The payment before it had been flagged by Santander's security systems and blocked pending a conversation with Mrs C. But this payment was allowed to leave the account just half an hour later without any apparent intervention from Santander.

Overall, I'm satisfied that the activity on the account leading up to and including this payment was suspicious. Multiple high value payments were leaving the account in quick succession, and I'm satisfied that this pattern of transactions was indicative that Mrs C may be falling victim to a scam. And I'm satisfied that Santander should've contacted Mrs C to discuss this payment before it left Mrs C's account – as it had done with the fourth payment which was ultimately prevented.

Had Santander contacted Mrs C about this payment, I think Mrs C would have told Santander what was happening to her. She had no reason not to tell Santander the truth. I haven't seen any evidence which would suggest that Mrs C had been provided with a cover story to tell the bank had it made further enquiries. And I'm satisfied that Santander would've instantly recognised that Mrs C was falling victim to a scam and warned her not to proceed, ultimately preventing her loss. For this reason, I'm satisfied it is fair and reasonable for Santander to refund this payment now.

I've gone on to think about whether Mrs C should also share some responsibility for her loss but given that I'm satisfied she was vulnerable at the time of the scam and was unable to protect herself, it wouldn't be reasonable for me to say that her actions amounted to negligence to the point she should now bear some responsibility for the success of the

scam. So, having taken everything into account, I don't think it would be fair to reduce the reimbursement due to Mrs C on the basis of her own actions.

Putting things right

Overall, I'm satisfied that it's fair and reasonable to require Santander to refund Mrs C:

- Payments 1 and 2 plus 8% simple interest calculated from the date Mrs C's claim was declined under the CRM code to the date of settlement*
- Payment 5 plus 8% simple interest calculated from the date the payment left Mrs C's account to the date of settlement*

*If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs C how much it's taken off. It should also give Mrs C a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 21 January 2025.

Emly Hanley Hayes
Ombudsman