

## The complaint

Mr D says Santander UK Plc (“Santander”), didn’t do enough to help when he fell victim to an ‘authorised push payment’ (“APP”) impersonation scam. He says Santander should reimburse him for the money he lost.

## What happened

As both parties are familiar with the circumstances of this complaint, I’ve summarised them briefly below.

In summary, Mr D fell victim to an impersonation scam. Mr D was contacted by someone purporting to be from the Financial Conduct Authority (“FCA”). Mr D was duped into believing that there was around £12,500 in cryptocurrency that was due to be returned to him. Mr D believing he was liaising with the FCA, and having purchased cryptocurrency previously, carried out the instructions that he was advised to do. This led to Mr D, with the assistance of the scammer, setting up an account with another Payment Service Provider (‘PSP’) / Electronic Money Institute (‘EMI’) whom I’ll call “W”.

Mr D’s account with W was credited with two payments of £1,000 from his Santander current account.

A £2,000 payment was then made from W to a beneficiary that Mr D believed was a senior account manager at the FCA. And the payment was for fees to convert and send Mr D the cryptocurrency he believed he was owed.

Mr D quickly realised it was a scam and reported the matter to both his own bank and W to see if he could recover the funds. Mr D also reported the matter to the police.

Santander ultimately didn’t consider it was liable for the losses Mr D incurred as the money was sent to an account in his own name and therefore the losses occurred from his account at W.

Unhappy, Mr D brought his complaint to our service. Our Investigator reviewed the matter and didn’t recommend the complaint be upheld.

Ultimately the Investigator explained the ‘Contingent Reimbursement Model (‘CRM Code’), which provides reimbursement to consumers who are victim of scams, to which Santander is a signatory of, didn’t apply to the payments Mr D made. They explained the payments were made to an account in his own name at W – so wasn’t covered by the CRM Code as the CRM Code requires consumers to pay ‘another person’. As Mr D wasn’t paying ‘another person’ they didn’t consider Santander were liable to consider reimbursing Mr D because of any obligation under the CRM Code.

Our Investigator also didn't think Santander ought to have done more to identify the payment as potentially fraudulent in the circumstances. They didn't consider Santander ought to have had a cause for concern that Mr D was potentially at risk of financial harm, or that he was falling victim to a scam to an extent that it ought to have intervened and questioned him further about the payments he made.

With regards to the recovery of any funds from the beneficiary account, as the money had gone to Mr D's own account at W and was then subsequently moved on, there wasn't anything Santander could do to recover any funds.

Mr D disagreed with the Investigator's opinion and as the matter hasn't been resolved, it's been passed to me to decide.

### **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; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'm aware that I've summarised this complaint and the responses 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 – which is to determine whether Santander are liable to reimburse Mr D under the CRM Code and whether it should have done more to prevent Mr D's losses. 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 an alternative to the courts.

Having thought carefully about Santander's actions, I'm not upholding Mr D's complaint. I do appreciate how disappointing this will be for him. Mr D was a victim of a cruel scam. But in weighing everything up, I don't consider Santander are liable to reimburse him under the CRM Code or otherwise. I'll explain why.

#### *Why the CRM Code isn't applicable*

The CRM Code sets out under 'DS1(2) (a)' the scope of what the CRM Code covers in relation to authorised push payment ("APP") fraud. And that is instances 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 payment Mr D made from his Santander account went to an account in his own name with W. So it isn't covered by or within the scope of the CRM Code. This is because Mr D wasn't paying 'another person'.

### The relevant law and regulations in place at the time

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account.

Here, Mr D authorised the payments from his Santander account to his account at W. I accept Mr D was assisted in the process of setting up the account at W by the scammers and they assisted in the facilitation of the payments. But Mr D was aware that the payments were being made to his account at W, and then from W, as he thought the purpose of the payment(s) were for 'fees' to release his cryptocurrency and believed that the beneficiary the payment was going to, was a senior account manager at the FCA.

So it is the case that Mr D authorised the payments that are in dispute. And under the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr D is responsible for them. That remains the case even though Mr D was the unfortunate victim of a scam and was duped into making the payments.

### What does this mean for Mr D?

In this case, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr D when he made the payment, or whether it should have done more than it did.

I've thought about this carefully. Having done so, I can't fairly say the payments Mr D made would (or should) have alerted Santander that Mr D was potentially at risk of financial harm, to an extent whereby it should have carried out some additional checks before processing the payments. So I don't consider Santander are liable for the losses Mr D incurred. I'll explain why.

I have to be mindful that banks process a high volume of transfers and transactions each day. And a bank has to strike a balance as to when it should possibly intervene on a payment against not holding up or delaying its customer's requests. Here, I don't consider there is anything unusual or remarkable about the payments or the amounts that ought to have alerted Santander to the possibility Mr D was being scammed or was at risk of financial harm. I don't consider there was enough going on, or a pattern of activity that was suspicious enough to have alerted Santander that things might not be as they seem. I'm also mindful that the payments were going into an account that was in Mr D's name.

All things considered; I think it was reasonable that the payments didn't flag as suspicious – and I can't say Santander acted unfairly here.

### Recovery of the funds

I have also considered whether Santander did all it could to try and recover the money Mr D lost. Given Mr D sent the funds to an account in his own name – with the money then being moved on – there wasn't anything further Santander would have been able to do to help Mr D recover his funds from W.

### Summary

While I appreciate Mr D's been the unfortunate victim of a cruel scam, I think Santander's decision not to refund him in this instance was fair and reasonable in the circumstances. I say this because I'm satisfied the CRM Code isn't applicable to the payments Mr D made – meaning Santander isn't liable to reimburse him under the provisions of the CRM Code. And Santander followed Mr D's instructions to make the payments and I haven't seen any reason why it shouldn't have done this. Unfortunately, given the funds Mr D transferred into his account with W were moved on, there wasn't anything further Santander could do to help Mr D recover his funds.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 July 2024.

Matthew Horner  
**Ombudsman**