

Complaint

Mrs G is unhappy that Santander UK Plc didn't reimburse her after she informed it she'd fallen victim to a scam.

Background

This complaint concerns losses from Mrs G's account. However, the underlying dispute also involved her husband, Mr G and so, where necessary, I've made reference to him in the background section of this decision.

In August 2022, Mr and Mrs G wanted to have some home improvement work carried out. They spoke to their neighbour about a contractor that they'd hired. They discussed and agreed with the contractor the scope of the works to be carried out in their garden. The contractor gave them an invoice – the total cost of the works was estimated to be £7,255. Mrs G used her Santander account to transfer £1,400 to the contractor's account. There were other payments made from a joint account that Mrs G holds with her husband, but that complaint will be dealt with under separate cover.

Unfortunately, little of the agreed work was completed. The contractor offered explanations for the delays but reiterated his intention to finish the job. However, eventually he sent a message confirming that he wouldn't be completing it after all. He told Mr and Mrs G that they could expect to hear from his solicitor to discuss next steps. As I understand it, there was no contact from the solicitor.

Mr and Mrs G have submitted photographs of the condition of their garden at the time the work stopped. There appears to have been some basic site clearance carried out and, as I understand it, a new fence was partially constructed. The photos also show that Mr and Mrs G's garden was left in a terrible state.

They reported what had happened to the trading standards department at their local council, the police and Santander. Santander looked into things but didn't agree to refund their losses. It wrote to Mr and Mrs G and said:

Based on the information you provided, this payment appears to be the subject of a dispute between you and the seller of the goods/services. We understand that this is disappointing. If you want to pursue recovery of these funds, you'll need to either attempt to contact the company/individual beneficiary directly or you'll need to report this to the police if you haven't already done so.

In a later communication, Santander reiterated its position that this was a civil dispute but said that *"should a successful prosecution be obtained, the matter may potentially be reviewed again from an appeal perspective."*

Mrs G was unhappy with the response she received from Santander and so she referred her complaint to this service. It was looked at by an Investigator who agreed with Santander's conclusions that this was a civil dispute, rather than a scam. As a result, she didn't uphold the complaint.

Mrs G disagreed with the Investigator's opinion and so the complaint was passed to me to consider. By the time that happened, there had been considerable progress in the police investigation into the contractor. The officer responsible for investigating allegations made against the contractor confirmed that they had been charged with fraud-related offences and the evidence gathered had been shared with the public prosecutor. I contacted Santander by email on 24 April to explain that the available evidence had changed. There was now, in my view, persuasive evidence that Mrs G had fallen victim to a scam.

Santander didn't agree. It said:

- We should await the outcome of the proceedings before deciding whether this is a civil claim.
- The contractor may be ordered by the courts to return Mrs G's money.
- The contractor could be found not guilty.

As no agreement could be reached between the parties, the case was passed back to me to consider.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account.

However, that isn't the end of the story. 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 authorised push payment ("APP") scams in all but a limited number of circumstances. Not all payments are covered by the code. For a payment to be covered, it must meet the relevant parts of the definition of an APP Scam, which are as follows:

"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 [...] the Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."

The CRM Code also states at DS(2)(b) that it doesn't 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..."

Santander contends that Mrs G hasn't fallen victim to an APP Scam and instead has a private civil dispute with the contractor. I've considered its arguments on that point carefully, but I'm persuaded that the evidence shows she fell victim to an APP Scam here. To reach that conclusion, I need to be persuaded that there is strong enough evidence to show that what happened to Mrs G meets the definition of an APP scam under the code – in other words, was the purpose for which she made this payment 'fraudulent' in the sense that it involved the commission or intended commission of fraud?

My determination of this complaint can't convict anyone of a criminal offence – that is the role of the criminal courts. I have to decide only whether it is fair and reasonable for Santander not to have upheld Mrs G's claim for reimbursement of her losses. The courts' rules of evidence don't apply to my investigation of complaints. I can both exclude evidence a court would admit and rely on evidence that would be inadmissible in court (DISP 3.5.9R). When considering the evidence supplied by Mrs G, the evidential standard applicable is the balance of probabilities. However, given the serious nature of the allegations involved, there must be convincing evidence to lead me to find it more likely than not the recipient procured the payment for purposes that were fraudulent.

I've considered the available evidence and I'm satisfied it does meet this threshold. Mrs G isn't the only person claiming to have been defrauded by the contractor in a similar manner. From the information shared with me, I can see that there's been one other credible fraud allegation made that suggests a similar means of operating. I've also seen evidence on social media of other people claiming to have fallen victim to the same contractor.

Most significantly, the police officer responsible for conducting the investigation into the contractors confirmed to Mrs G that those individuals have been charged with fraud related offences. That means that the police officer who led on the investigation is persuaded that there is strong enough evidence to show beyond reasonable doubt that a crime has taken place and that the accused persons committed that crime. I accept that isn't the same as the contractors being *convicted* of a crime – but if the police consider that it's likely that the contractors will be convicted by a court applying a much higher standard of proof, it's difficult for me to not conclude that Mrs G's allegations meet the lower standard of proof.

Santander has also referred to R3(1)(c) of the Code as a justification for pausing investigation into the case. That section of the Code says:

If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision.

However, I don't think that section is applicable to the facts of this case. While it allows a firm to delay making a decision on reimbursement pending an investigation by a statutory body, Santander had already reached its decision on reimbursement by the time the case was passed to me to decide.

Having established that the payment is covered by the CRM Code, I've gone on to consider whether any of the relevant exceptions to reimbursement were applicable. The Code allows a firm to not reimburse a customer if it can establish that:

- *"The customer ignored an effective warning in relation to the payment being made; or"*
- *"The customer made the payment without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate."*¹

I'm satisfied that the first exception listed above isn't applicable here. I understand Mrs G did see a warning during the payment journey, but it was specifically to warn her to guard against the risk of email interception scams. I accept this was the closest general warning Santander could've provided given what it knew about the payment. Nonetheless, the fact that the content focused on a risk posed by a different type of scam meant that I can't say Mrs G failed to take appropriate action in response to it and so this exception doesn't apply.

¹ There are other exceptions in the Code, but they aren't applicable here.

I'm also satisfied that Mrs G made this payment with a reasonable basis for believing that the business with which she transacted was legitimate. She'd relied on a recommendation from a neighbour and had no real reason to question whether she could trust the contractor. Furthermore, she received several quotes before going ahead with this contractor. The estimated price of the works was broadly in line with the quotes she received from other traders. Overall, I'm not persuaded that there were any clear and unambiguous red flags that ought to have put Mrs G on notice that she might be about to fall victim to a scam. As a result, I'm persuaded that Santander should reimburse her under the Code.

Other issues

Santander has mentioned that, if the contractor is being prosecuted, the authorities might recover funds to which Mrs G has a partial entitlement. If Santander reimbursed her in full now, there is a risk that she ends up recovering more money than she lost to the scam.

I don't know how likely it is that any funds will be recovered as part of those proceedings. But I agree that, if Santander has already paid a refund, it would not be reasonable for those recovered funds to be returned to Mrs G. However, since Santander can ask her to undertake to transfer to it any rights she may have to recovery elsewhere, I'm not persuaded that this is a reasonable barrier to it reimbursing her in line with the Code's provisions.

Final decision

For the reasons I've set out above, I uphold this complaint. If Mrs G accepts my decision, Santander UK Plc needs to refund the payment made to the scammer. It should also add 8% simple interest per annum to that sum calculated from 26 April 2024 (i.e., the date it considered the new evidence and declined reimbursement) until the date any settlement is paid.

Santander may require Mrs G to provide an undertaking to assign to it her rights to any monies she might elsewhere be entitled to recover in respect of this loss. If Santander asks her to provide such an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

Santander may treat Mrs G's formal acceptance of the terms of my final decision as being sufficient for this purpose. Alternately, it would need to meet any costs in drawing up an undertaking of this type.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 14 June 2024.

James Kimmitt
Ombudsman