

The complaint

Miss G is unhappy because Santander UK Plc ('Santander') declined to refund £1,349 which she lost due to a scam.

What happened

The details of the complaint are well known to both parties, so I will not go into every detail of what happened here. But in summary, both parties accept that in October 2023 Miss G was tricked into sending funds in the belief she was sending them to secure a rental property.

Miss G was looking to rent a property in England and found a flat on a well-known social media marketplace which appeared to meet her needs. She reached out to the listed contact and communicated with them before being put in touch with a second individual who gave her more details about the rental property. They told her the rental would be managed by a well-known travel and accommodation website. They said that she would need to forward a deposit and the first months rent to secure the property, but that if she was not happy with after viewing it then her funds would be returned to her. Miss G was persuaded and sent a payment of £1,349 to an account in the name of a third individual.

The scam came to light when Miss G organised to view the property but the individuals she had been liaising with cut off all contact with her. Miss G raised the matter with Santander. Santander investigated Miss G's complaint and issued its final response in in October 2023, refunding 50% of Miss G's losses. In summary, they accepted that they had not met all of their obligations, but they did not think Miss G had done enough to check she was dealing with a legitimate party who had the rights to rent a property out. They contacted the receiving bank, who said there were no funds remaining to in the receiving account to return to Miss G.

Unhappy with Santander's response, Miss G brought her complaint to our service and one of our investigators looked into what had happened. They recommended that Santander had acted fairly and reasonably in refunding 50% of her losses, as they agreed that Miss G had made the payment without a reasonable basis for believing she was dealing with a legitimate landlord or agency who had a flat to offer her.

Miss G did not agree with our investigator's opinion on Miss G's complaint and asked them to reconsider. In summary, she said:

- She felt very judged on her actions when trying to rent out a flat, without the help of professionals;
- She genuinely was trying to rent a flat, and now has rented a flat in the same place she had been trying to before;
- She had gone to Santander as she wanted them to stop the transaction or help her get her money back, but they did not help her;
- They took too long in reporting it to the receiving bank; and
- The scammer was never investigated.
- She also came back to us later to say that she had now rented a property and had done this online, never meeting the landlord or the letting agent directly and receiving

the key from a third party.

As agreement couldn't be reached the complaint has now been passed to me for a 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 the 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 be good industry practice at the time.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of their customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse them, even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I have considered whether Santander should reimburse some or all of the money Miss G lost in line with the provisions of the CRM Code and whether it ought to have done more to protect Miss G from the possibility of financial harm from fraud.

There is no dispute here that Miss G was tricked into making the payment. But this is not enough, in and of itself, for Miss G to receive a refund of the money under the CRM Code. The Code places a level of care on Miss G too.

The CRM Code

Santander is a signatory of the Lending Standards Board Contingent Reimbursement Model ('CRM') Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Santander say an exception to reimbursement applies in this case. It says that Miss G didn't have a reasonable basis for believing the person she transacted with was legitimate or was providing a legitimate service.

It is for Santander to establish that a customer failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM Code.

Those exceptions are:

- The customer ignored an effective warning in relation to the payment being made;
- 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.

**There are further exceptions within the CRM Code, but they do not apply in this case.*

Did Miss G have a reasonable basis for belief?

Santander have refunded 50% of Miss G's loss as they accept they could have done more to warn her about the risk of scams here. So as this is not in dispute, I have not considered whether Miss G was provided with an effective warning at the time of her payment. So the important finding for me to make here is whether Miss G had a reasonable basis for belief that the transaction was genuine. I have carefully considered Miss G's representations, and I

am sorry to say that I agree that Miss G made the payment without a reasonable basis for belief.

I say this because during the series of events that led up to her making the payment, I think there were some red flags that ought to have given Miss G cause for concern about the legitimacy of the people she was liaising with and the agreement she was entering into. Whilst I appreciate some of these things in and of themselves may not have led her to understand she was falling victim to a scam, considering them in the whole I think they ought to have made her ask further questions and carry out additional checks.

- Miss G found the property on a social media marketplace rather than through any official rental agents or websites. This does not mean in and of itself that this would have been a scam, but would reasonably put most people on notice that further checks would need to be done prior to parting with any money.
- Miss G was told she had to pay the funds before she even viewed the property. This meant she was not able to independently verify that the property was real, or that the people she was dealing with had the right to rent out the property or even access to it. I do understand they said that if she did not like it after viewing it she could get a refund, but there should have been concerns that she was being asked to part with her money prior to even viewing a property. The fact that they said she was not allowed to view it without parting with money should have been suspicious to Miss G.
- The price appears to be too good to be true – she was originally told it was just £400 on the advert, which then went up to £449 for a two bed, two bathroom, fully furnished property including all bills and council tax. Similar properties in the same area which were on the market were priced considerably higher, and given this was meant to include all bills I think the price would have appeared too good to be true and so it ought to have raised concerns for Miss G.
- Miss G was sent an invoice which I can understand may be persuasive in leading her to believe she was dealing with a legitimate business – it was headed with branding from a well known travel and accommodation website. She was told that they would securely hold her funds. However, she was then asked to send the funds to a personal account, which would be at odds with the idea that the well known company were playing a role in the tenancy. She was not given any option to pay through the website or app of the well known travel company. The personal account was also not in the name of either of the people she had been communicating with about the property previously, which should have given cause for concern.
- Miss G was not provided with a contract or tenancy agreement, or indeed any documentation other than the invoice. One would expect to see further formal documentation when entering into such an agreement. This was not in line with how legitimate landlords or letting agents operate.

So, when considering all of this, I do not think Miss G made sufficient checks to confirm she was dealing with a legitimate landlord, with the rights to rent out the property in question to her. And so it follows that Santander's refund of 50% of her losses was fair and reasonable in the circumstances of this complaint and I will not be asking them to do anything further.

Should Santander have done more to protect Miss G?

In addition to their responsibilities under the CRM code, when Miss G made the payments, Santander should fairly and reasonably have had systems in place to look out for unusual and out of character transactions or other signs that might indicate that Miss G was at risk of fraud or financial harm (amongst other things). However, there was nothing about the payment that ought reasonably to have alerted Santander that Miss G was at risk of fraud or financial crime – so I do not think that they needed to intervene with the payment at the time it was being made.

Recovery of funds

I have also considered whether Santander could have done more to try to recover the money once it had been told of the scam. We would expect a business to take reasonable steps to try and recover the money from the bank it was sent to, with urgency, after their customer notifies them they fell victim to a scam. Santander did reach out to the receiving bank as I would expect, but unfortunately no funds remained in the account to recover for Miss G.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 22 November 2024.

Katherine Jones
Ombudsman