

The complaint

Miss E complains that Santander UK Plc won't reimburse her the money she says she lost to a scam.

What happened

Miss E was looking for a tradesperson to update a bathroom. She made contact with a company (which I'll refer to as C) through a well-known recommendation website.

C's director attended Miss E's property and measured up. Miss E was provided with a quote and an invoice. All appeared as expected and professional. Miss E decided to go ahead. She paid an initial deposit of £1433.12 by Faster Payments transfer from her Santander account.

However, on the day the work was due to take place, C emailed to saying the plumber had Covid-19. Miss E received further emails saying that C was trying to find a replacement plumber.

A couple of days later, C said it would refund Miss E. Despite Miss E repeatedly chasing C's director, and repeated promises to refund, no refund was ever made and no work was done. While initially C responded to Miss E's contact, it later ceased to do so.

Miss E attempted to make a claim against C through the courts, but Miss E was told there were issues with C's director's address being incorrect. She has had no success in pursuing the claim through this route. Companies House shows that C has recently been dissolved.

Miss E reported the matter to Santander as having been a scam. The bank didn't consider that what had happened was an Authorised Push Payment Scam (APP Scam). Santander said that Miss E had a civil dispute with C. It said C was listed on Companies House. It wouldn't repay the money she'd lost.

Miss E referred her complaint to this service for an impartial review.

Our Investigator looked into everything. Miss E supplied the email correspondence she'd had with C which showed the repeated promises to refund which weren't kept. The Investigator also contacted the beneficiary bank about the account belonging to C. The other bank said it had received other scam reports. These had been similar in nature to Miss E's. Her payment had been spent primarily on day-to-day expenses and there was very activity that might have been consistent with legitimate business activity.

The Investigator carefully considered the evidence and said she thought that it was more likely than not that Miss E had been the victim of an APP Scam. She thought that C had never intended to carry out the work Miss E had paid for. This was based in part on information the Investigator was provided with by the beneficiary bank (the bank that had held the account that received Miss E's payment).

The Investigator noted that Santander was a signatory of the Lending Standards Board's

Contingent Reimbursement Model Code (the CRM Code). The CRM Code requires signatories to refund the victims of APP Scams in all but a limited number of circumstances. The Investigator said Santander ought to have reimbursed Miss E under the CRM Code.

Santander didn't agree. It pointed to a company listed on Companies House which was still appeared to an active entity. It had been told by the beneficiary bank that there were no concerns about C's account.

In light of this disagreement, I have been asked to make a final decision on the matter.

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.

Having done so, I am satisfied that:

- The balance of the evidence supports the finding that this was an APP scam, and the CRM Code is applicable.
- Under the terms of the CRM Code, Santander should have refunded the money Miss E lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- In the circumstances, Santander should now fairly and reasonably refund the outstanding sum Miss E lost.
- The money was sent from Miss E's current account. She has been deprived of the use of these funds from the date on which Santander declined to reimburse her scam claim. So Santander should also pay interest on the money it should have refunded at the rate of 8% simple per year from the date Santander first declined to reimburse her to the date of settlement.

In reaching these findings, I have carefully considered Santander's representations about why Miss E is not entitled to be reimbursed here, and why the CRM Code is not applicable.

Before explaining my reasoning, I want to acknowledge the challenges faced by a bank in determining the difference between a legitimate supplier or company which has simply failed to fulfil the agreed contract and the alternative scenario where what occurred was a deliberate APP scam only ever intended to defraud customers of their money. With that in mind, in reaching my findings, I have carefully considered both possibilities. But on a balance of probabilities I am persuaded that Miss E's payment did result from an APP scam

Firstly, I acknowledge that there is evidence here that could point to this being a legitimate transaction, as well as evidence to suggest it was not. I've carefully considered all of this to determine which scenario I find most persuasive on a balance of probabilities.

The work Miss E was paying for was not carried out by C. In itself though that is not enough to persuade me this was a criminal scam at the point she paid C. There is the possibility that at the time the payment was made C had the intention of carrying out the work, but that for whatever reason it could not do so, and could not refund Miss E either.

For me to consider this was likely a scam rather than a legitimate transaction I'd need to be persuaded on that balance of probabilities that C had no intention of fulfilling the agreed work and that this was simply an attempt to obtain money by deception.

Having researched online for information about C, I've been unable to locate anything that might indicate it was operating legitimately. Miss E explains she reported what had happened to the tradesperson rating website. Subsequently it removed C's listing – presumably to avoid others falling victim. Looking at the entry on Companies House, the limited company was created only a few months prior to Miss E's payment. The beneficiary bank indicates it received more than one scam report prior to the date Miss E's work was due to commence.

In all, I've seen very little to lead me to believe C had ever operated legitimately.

While the beneficiary bank appears to have initially advised Santander that it had no concerns about the account, it has since provided further information to our Investigator. As our Investigator explained to Santander, this tended to suggest Miss E's payment had resulted from an APP scam.

I will explain in broad terms what that evidence leads me to believe and why.

Firstly, two other scam reports were received by the bank in relation to C. Both were made prior to the date Miss E's work was scheduled. That bank also comments that aside from a relatively small sum paid to another of C's director's companies (which I note also appears to have been dissolved) the funds paid by Miss E were dissipated on what appear to have been general living expenses. It does not appear to me that this was anything related to the purported purpose of the business or connected in any way to the work Miss E was purportedly paying for. Overall, the evidence points towards C not having held a legitimate intent to carry out the work when it procured Miss E's payment.

I've noted the Companies House record that Santander has pointed to when it responded to the Investigator's assessment of Miss E's complaint. I am satisfied that the record it refers to is for a limited company with a similar but not identical name, that the directors and location of that other business are different, and that in short, it is a wholly different and unconnected business. C is not an active company - the correct Companies House entry reveals instead that it failed to ever file its required annual accounts and has now been dissolved.

Initially C remained in contact by email with Miss E after she'd made her payment. By the end of 2023 however, she was receiving no response from C. At this point Miss E began to suspect C hadn't ever been a legitimate business and that in fact she had been defrauded of her money, reporting the scam to Santander shortly afterwards.

In some situations, ongoing communications from the alleged scammer might point towards that person's legitimacy. I've considered that possibility here. But based on the evidence I have seen from the beneficiary bank, I consider it more likely than not that this was an attempt to delay Miss E from reporting the matter to her bank. Such a delay had the effect of allowing time for the funds she'd paid to be fully dissipated by C's director. That engineered delay thus avoided any prospect of Miss E's bank being able to recover her funds. On the evidence, I think it most likely that was the director's intent here, rather than any indication of legitimacy.

Taking everything into consideration, I find the evidence on balance supports Miss E's contention that she was the victim of a scam intended to defraud her of her money from the outset. I am persuaded that this was more likely than not an APP scam under the CRM Code's definition. I find the CRM Code is applicable to the payment she made.

Santander has not sought to rely on any of the permitted exceptions to reimbursement specified in the CRM Code. But for the avoidance of doubt, I do not consider it could fairly establish any of these exceptions in this case.

Specifically, in this case I'm satisfied that the requirements of the effective warning exception were not met because Santander has not evidenced the provision of an Effective Warning related to the scam that occurred, nor that any such warning would have made a material difference to the success of the scam. It cannot therefore seek to rely on this exception to full reimbursement under the CRM Code.

I'm further satisfied that Miss E did not lack a reasonable basis of belief in making these payments. In particular, I note she had been convinced of C's legitimacy by meeting the director in person and C's provision of what appeared to be professional quote details and an invoice. She'd found C through a legitimate recommendation website. I haven't seen anything here that I think ought to have caused her obvious concern that C was not a legitimate company or acting with legitimate intent.

Nor do I find there are any other applicable reasons why Miss E should not have been fully reimbursed by Santander under the CRM Code.

Putting things right

For the reasons set out above, I've decided that the fair and reasonable outcome in all the circumstances of this case is that Miss E ought reasonably to have been fully refunded under the CRM Code. I therefore direct Santander UK Plc to pay Miss E:

- the money she lost as a result of this scam being the sum of £1,433.12. It should do so within 28 days of receiving notification of Miss E's acceptance of my final decision; plus,
- interest at the rate of 8% simple per year on that amount (less any tax properly deductible) from the date Santander initially declined Miss E's claim to the date of settlement.

I find it extremely unlikely that Miss E has any reasonable prospect of recovering her money through other routes given the failure of her previous attempt to pursue C through court action. However, it would be unfair if that later proved possible and might result in double recovery.

With that in mind, Santander may require Miss E 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 Miss E to provide such an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking. Santander may treat Miss E's formal acceptance of the terms of my final decision as being sufficient for this purpose. Alternately, Santander would need to meet any costs in drawing up an undertaking of this type.

My final decision

I uphold Miss E's complaint about Santander UK Plc, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 7 January 2025.

Stephen Dickie
Ombudsman