

Complaint

Mrs T is unhappy that Santander UK Plc didn't reimburse her after she told it she'd fallen victim to a scam. In bringing this complaint, Mrs T is represented by Mrs W. However, for simplicity's sake, I've generally referred to Mrs T in the text of the decision.

Background

The background to this case is well known to the parties, so I don't intend to set it out in full here. Instead, I've set out a brief summary of the relevant facts.

In November 2020, Mrs T contacted a roofing contractor and asked that they carry out some essential repairs to her home. This put her in contact with a man I'll refer to as Mr A. According to Mrs T, the initial quote for the repairs was £4,500. It subsequently transpired that further works were necessary and the eventual bill was for £13,000.

Mrs T tells me that a different contractor inspected the works some time later and confirmed that they'd been completed poorly and at an inflated price. Mr A remained in contact with Mrs T. Mrs T appeared to have believed she'd entered into a relationship with Mr A. Mr A, however, appears to have exploited this connection by asking her for money. The reasons he gave included:

- Needing funds for a new vehicle for his business. I understand this was after he'd dissolved his limited company.
- Being in financial distress due to his business closure, which he claimed had tied up his assets and meant he couldn't make short term payments.
- Requesting money to cover personal expenses in the US, including a hire car and business trips.
- Claiming that he needed her to convert funds to foreign currency and give it to someone he knew apparently without explanation.

These transfers included an inheritance Mrs T received from a relative of £80,000. This was transferred to Mr A within a few days of Mrs T receiving it. From what I've been told, payments were initially directed to Mr A's business account, but as the business closed, payments shifted to his personal account or third-party accounts.

I understand that, in September 2022, Mrs T confided in a friend that she'd lost her life savings. This prompted the friend to tell Mrs W, Mrs T's daughter and her representative in bringing this complaint. Mrs W has since been granted a Power of Attorney to enable her to manage Mrs W's financial affairs.

Once she saw what had happened, she raised a complaint with Santander. It didn't agree to refund her losses. Mrs T wasn't happy with that response and so she referred her complaint to this service. It was looked at by an Investigator who upheld it. The Investigator applied the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. She found that Mrs T was vulnerable under the definition in the Code and so Santander should've refunded her.

However, she noted that not all of the payments could be covered by the CRM Code. First, she found that the first payments made to Mr A were in connection with a legitimate contract to carry out roof repairs (albeit Mrs W says this was carried out inadequately). She said this meant those payments couldn't be refunded under the Code. She also noted some of Mrs T's losses were a result of card payments which aren't covered under the Code either. She said Santander didn't need to refund the card payments, but that it should've refunded the faster payments made by Mrs T, except for those that were made in connection with the roof repairs.

Mrs T accepted the Investigator's view, but Santander didn't. It didn't agree that the evidence was strong enough to show Mrs T had fallen victim to a scam. It was also unconvinced that the Investigator could safely conclude Mrs T was vulnerable at the relevant time, given that her diagnosis of dementia came much later.

Its principal arguments in response to the Investigator were:

- Mrs W had a Power of Attorney that enabled her to manage Mrs T's financial affairs. However, this wasn't registered with Santander for several months. Santander argues that this shows that Mrs W can't have been so concerned otherwise she'd have registered it as soon as possible.
- Mrs T is the director of a limited company and was running that company at the time of the scam. The fact that she had the capacity to do so contradicts the findings reached by the Investigator.
- Mr A repaid a significant amount of money to Mrs T, which is atypical in scams.
- We couldn't be sure as to whether Mrs T had capacity at the time she started making payments to Mr A. The fact that she was later diagnosed with dementia doesn't provide a reliable indication as to her cognitive capabilities at that time.
- Furthermore, it observed that the letter confirming the dementia diagnosis said that the family planned for Mrs T to move closer to Mrs W but that the move was dependent on Mrs W selling her home. The consultant wrote that they had *"reassured [Mrs W] that [Mrs T's] mental state appears to be relatively stable and I would not worry too much about this move."* Santander argues that this shows that Mrs T is still able to make decisions for herself which suggests that it was unlikely she made these payments as part of a scam and it's doubtful that she was vulnerable at the time.
- Finally, it pointed out that the police have decided not to treat this as fraudulent, and this supports its contention that it wasn't.

Since Santander disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

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 (in this case, the 2017 regulations) 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.

However, the Code doesn't apply to all payments. In order for Mrs T to benefit from the provisions of the Code, these payments need to meet the relevant part of the Code's definition of an APP scam. In other words, the payments must be:

"a transfer of funds executed across Faster Payments [...] 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."

It also specifically excludes from its ambit what it refers to as *"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..."*

To reach a finding that Mrs T was the victim of a scam, I'd need to be persuaded that Mr A intended to defraud her. I obviously can't know his intentions at the relevant time. I therefore have to draw inferences from what the other available evidence tells me and decide whether it shows that, on the balance of probabilities, Mrs T was the victim of a scam rather than some other kind of dispute.

I acknowledge Santander's concerns on this point. I agree that it's impossible to determine with absolute certainty that it was a scam. However, I think the preponderance of the evidence suggests it was. The evidence that I've considered in coming to that conclusion includes the verbal testimony of Mrs T's daughter and her best attempts to clarify Mrs T's recollections of events.

Several factors point to this conclusion, including the rapid escalation of financial demands and the variety of excuses given by Mr A are consistent with a pattern of economic abuse. The reasons Mr A gave as to why he needed Mrs T's financial support became progressively less plausible. It's unusual, for example, that she'd be asked to convert funds into a foreign currency and transfer them to a third-party. It's similarly far-fetched that she would spend so much money on holiday accommodation for trips that she herself didn't go on.

I'm also mindful of the fact that the values of these payments weren't consistent with someone of her means – realistically, she wasn't in a position where she could make such large payments gratuitously. I've taken into account that there were some funds sent back by Mr A. I accept that this is a little unusual, but it's not implausible that those sums were sent as "proof" of sincerity and therefore an effort to build trust before increasing demands. To my mind, Mr A's requests for money suggest a calculated approach to exploit Mrs T's emotions and goodwill.

I recognise that the police don't appear to have taken matters further. I'm not persuaded that means that this wasn't a scam within the meaning of the definitions in the CRM Code. Police decisions to investigate or prosecute are often influenced by operational considerations, including resource allocation, the complexity of the case, and competing priorities, rather than the absence of wrongdoing. Additionally, the cost of investigation may be weighed against the likelihood of successful prosecution, which can lead police to deprioritise cases, even where evidence suggests fraud. While I can see why it would've been helpful if the police had been undertaking a substantive investigation into the activities of Mr A, the absence of one doesn't alter the indications that Mrs T was likely targeted in a scam.

Overall, I'm satisfied that the evidence shows it's more likely than not that Mrs T was the victim of a scam here. As a result, many of the payments she made in connection with it are covered by the provisions of the CRM Code. The CRM Code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams unless an exception to reimbursement applies. However, R2(3) in the Code says that where a customer is vulnerable and has fallen victim to an APP scam, they should be reimbursed even if an exception applies.

It goes on to define vulnerability in the following way:

"All Customers can be vulnerable to APP scams and vulnerability is dynamic. The reasons for dynamics of vulnerability may include: the personal circumstances of the customer; the timing and nature of the APP scam itself; the capacity the customer had to protect themselves; and the impact of the APP scam on that customer."

The Investigator concluded that Mrs T was vulnerable as a consequence of her dementia, even though it was undiagnosed at the time. She found that it significantly diminished her ability to protect herself from the scam. Mrs T's condition likely affected her memory, as she believed she had only transferred £5,000 to £10,000, when in reality, she had sent much more. This diminished capacity suggests Mrs T was unlikely to be able to spot red flags that might have been apparent to others.

Furthermore, Mrs T had been diagnosed with a subtype of dementia that is recognised as having a particularly rapid onset. That means that patients tend to experience a sharp decline in mental capacity shortly after diagnosis. For that reason, I don't find it particularly unusual that Mrs W might have found it difficult to keep up with the decline in her mother's health and that might explain the delay in registering the POA with the bank or the fact that Mrs T continued to be a director of her own limited company.

The fact that she continued as the director doesn't, to my mind, provide much insight into her state of mind at the time. The company appears to be a vehicle for a buy-to-let investment with mortgages secured on two properties. The correspondence address for Mrs T on Companies House is for her accountant. It seems unlikely that she'd have been actively involved in running the company on a daily basis. Mrs W has since confirmed that the day-to-day tasks of running the company are carried out by a letting agent and an accountant.

I'm also not persuaded that the content of the review letter by the psychiatrist shows that Mrs T had capacity to make significant financial decisions at the time it was written. It notes that her house was in the process of being sold (but it doesn't say that's because Mrs T has decided to sell it) and the fact that the consultant says her mental state appears relatively stable seems to me to be a comment on her subjective state of well-being, rather than her mental capacity. The reassurance is that the consultant thinks it's unlikely that Mrs T will find the move to be a source of distress.

Overall, I am satisfied that Mrs T meets the CRM Code's definition of a vulnerable customer. Her vulnerability, combined with the tactics employed by Mr A, meant she could not reasonably be expected to identify or protect herself from the scam. It follows that I am persuaded that Santander should reimburse her for the payments made within the scope of the CRM Code.

Final decision

For the reasons I've explained, I uphold this complaint. If Mrs T and Mrs W accept my final decision, Santander UK Plc should refund all of the faster payments that were made in connection with this scam, less the £13,500 that was paid for the roof repairs and the

£31,150 that was paid back to Mrs T by the fraudster.

It should also add simple interest at 8% per annum to each payment calculated to run from the date it declined the claim under the CRM Code, until the date any settlement is eventually paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mrs W to accept or reject my decision before 6 December 2024.

James Kimmitt
Ombudsman