

complaint

Mrs H complains that Santander UK Plc won't reimburse her for two cash withdrawals she made after she fell victim to a scam.

background

Mrs H holds a cash ISA with Santander. In March 2018, she received a call from someone claiming to be a Police Officer. Mrs H says the caller gave her his badge number and a crime reference number and told her he was part of an investigation into alleged embezzlement by branch staff. Unknown to Mrs H at the time, she was speaking to a scammer, and no such investigation was taking place.

The scammer persuaded Mrs H to assist with the police investigation by withdrawing cash from her branch on two dates. This money would later be collected from her - purportedly for fingerprint analysis. Mrs H was instructed to say that the money was to pay for a new kitchen or bathroom, should she be asked.

On 19 March 2018, Mrs H visited a Santander branch to withdraw the first sum. She made a counter withdrawal of £5,000 in cash. Santander says Mrs H provided the identification required and was read a scam script. It's provided the cashier's notes from the transaction, which include the words "*for kitchen*".

The following day, Mrs H visited the same branch, and made a further cash withdrawal. This time she withdrew £4,600. Santander again says that Mrs H provided the necessary identification and the withdrawal was agreed, but it doesn't have a record of the reason for this withdrawal — and, more generally, it says its staff have little or no recollection of the events of either transaction.

Mrs H then handed the money to the scammer (believing he was a Police Officer). Later that day she spoke to her daughter who realised Mrs H had likely fallen victim to a scam. They reported this to Santander.

The scammer had already collected the cash from Mrs H, so there was nothing Santander could do to retrieve the funds. Santander said that because Mrs H had withdrawn the money, it was not responsible for her losses. It acknowledged that she'd been given some incorrect information when she'd reported the scam, and it paid her £75 in compensation.

Our investigator thought that Santander could have prevented the scam. She thought there were indicators that Mrs H might be a vulnerable customer at the time. The investigator thought there was sufficient reason for Santander to be concerned Mrs H was about to fall victim to a scam or fraud. She didn't think the reason Mrs H had given was sufficient to reassure the bank on this point. She said that by following the banking protocol and questioning Mrs H further, Santander would likely have identified Mrs H had been given a basic cover story, and so ultimately prevented the withdrawals.

Santander didn't agree. It said Mrs H's account was an instant access ISA, and this suggested Mrs H had chosen an account permitting her to freely access her funds. It said it had an obligation to allow customers access to their funds, under the account mandate.

While neither cashier had much recollection of the withdrawals, Santander said that on both occasions Mrs H had been read out a script, containing a reference to this specific scam.

Santander said it didn't think the amounts she'd withdrawn were extraordinary, and didn't think the banking protocol was the appropriate response here. It said Mrs H had misled its branch staff and given a plausible but false reason for the withdrawals.

It didn't agree there was sufficient reason, in the moment, for its staff to be concerned Mrs H was at risk of financial harm.

Santander has since offered to refund the second withdrawal of £4,600 and pay £100 for Mrs H's distress and inconvenience. But it didn't accept it should reimburse Mrs H for the initial withdrawal of £5,000. Mrs H did not accept Santander's offer.

As a result, the complaint has been referred to me to decide.

my findings

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 have reached the same conclusions as the investigator and for broadly the same reasons.

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.

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. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story:

- The law recognises that a bank may be liable to its customer if it makes a payment in circumstances where it has reasonable grounds (although not necessarily proof) for believing that the payment instruction was an attempt to misappropriate the funds of its customer (known as 'the Quincecare duty').
- Regulated firms like Santander are also required to conduct their '*business with due skill, care and diligence*' (FCA Principle for Businesses 2) and to '*pay due regard to the interests of its customers*' (Principle 6).

And as a matter of good industry practice at the time, I consider firms should also have taken proactive steps to:

- identify and assist vulnerable consumers and consumers in vulnerable circumstances, including those at risk of financial exploitation (something recognised by the FCA in recent years and by the British Bankers Association's (BBA) February 2016 report '*improving outcomes for customers in vulnerable circumstances*');
- look to identify and help prevent transactions — particularly unusual or out of character transactions — that could involve fraud or be the result of a scam (something also recognised by the British Standards Institute's October 2017 '*Protecting customers from*

financial harm as a result of fraud or financial abuse – Code of practice, which a number of banks and trade associations were involved in the development of); and,

- in relation to branch transactions — follow the Banking Protocol when available.

This means that there are circumstances, irrespective of the payment channel used, where a bank should, in my opinion, fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

This is particularly so in light of the environment created by the increase in sophisticated fraud and scams in recent years — which banks are generally more familiar with than the average customer.

In this case I need to decide whether Santander acted fairly and reasonably in its dealings with Mrs H when she withdrew £9,600 in cash, in branch, over two days, or whether it should have done more than it did.

As I've explained above, Santander has now offered to refund Mrs H the amount she paid the scammer through the second transaction, so I shall only consider that transaction briefly and I will focus on the first transaction.

Of particular relevance in this case is the Banking Protocol, so I have set out more information about that below. But I note the BSI Code also contains similar recommendations to detect and prevent fraud.

The Banking Protocol

The Banking Protocol is a multi-agency initiative between the Police, financial sector organisations (including banks, building societies and the post office) and Trading Standards *'aimed at identifying customers who are in the process of being defrauded and implementing safeguarding procedures to prevent their repeat victimisation and further loss of funds'*. It has been fully in force since March 2018.

In broad terms, according to UK Finance's toolkit for PSP's, financial businesses commit to:

- Look out for any unusual or out of character withdrawals and to implement the Banking Protocol procedure when such transactions are identified.
- Discreetly question the customer about the withdrawal or transaction and their reasons for making it, keeping in mind that the customer may have been told they are helping to catch a corrupt bank employee and may have been given a cover story to tell if asked about the transaction.
- Consider the responses against what they expect as normal activity on the individual's account. If they are concerned or suspicious that the customer may be the victim of fraud, they should notify a senior member of staff, who should take the customer to a quiet area and ask further questions to establish more details.
- If the senior colleague believes the customer is the victim of fraud, either as a result of the answers provided or through their general behaviour, they should call the Police immediately who will attend the branch to speak to the customer.

The Banking Protocol procedures are not limited to elderly or vulnerable customers, or certain fraud types, and bank staff are encouraged to contact the Police even if they are not sure

Did Santander act fairly and reasonably in this case?

As I've explained I consider that as a matter of good practice Santander should have been on the lookout for unusual and out of character transactions. I'm satisfied the request Mrs H made to withdraw such a large amount of cash was one that was clearly out of character and unusual for her. I believe there were also other warning signs that Mrs H might be at risk of financial harm — I've explained why below.

Mrs H's ISA account was initially opened in May 2010. I can see from the statement history that she'd never made a withdrawal from the account prior to the scam. So, at a very basic level the first withdrawal of £5,000 in cash during the scam was a change in her typical usage of the account, in that this activity was different to what had happened in the previous eight years.

Santander says that this type of account permitted instant access withdrawals, indicating that when Mrs H chose this account it was her intention to make such withdrawals.

I accept that is possible. Of course, there could have been other reasons for choosing the account. But it doesn't automatically follow that choosing an instant access ISA means that a customer intends to use it to make large cash withdrawals in branch. And Mrs H had not previously made withdrawals of that nature.

Even if that was the reason for her choice, I don't think this makes a £5,000 cash withdrawal one I'd consider *typical* for Mrs H, given that she'd held the account for several years without making any similar transactions or indeed any withdrawals at all.

Mrs H was in her mid-70's, widowed and retired at the time the scam occurred. I don't intend to make a finding on whether or not Mrs H was a vulnerable customer at the time. But I do consider Mrs H's individual circumstances relevant factors, in that this profile is one disproportionately targeted by scammers. So, I think this meant she was at greater risk of becoming a victim of a scam – this is recognised by the Banking Protocol and the BBA's report '*improving outcomes for customers in vulnerable circumstances*' (although Santander should have been on the lookout for *any* unusual or out of character transaction, whether Mrs H was vulnerable or not).

And I think this should have been something the branch staff considered when thinking about whether Mrs H might be at risk of financial harm when she made such a large cash withdrawal. That's been good industry practice for some considerable time (for example, as recognised in an earlier statement of best practice from the BBA entitled 'the national banking protocol').

The transaction records show that the money was withdrawn in £20 notes. That means 250 notes in total. Aside from any other consideration, I'd expect there to have been some concern about the safety of Mrs H carrying this amount of cash with her on leaving the branch.

I'm also mindful the reason that Mrs H gave the branch staff for the first cash withdrawal, to pay for a kitchen, potentially matched a common scam: the rogue trader scam. This is a well-known type of scam that typically targets older consumers who live alone, and usually

involves large cash withdrawals. The scam Mrs H fell victim to wasn't a rogue trader scam, but given the circumstances, I think Santander ought fairly and reasonably to have considered this to be a possibility requiring further exploration. On top of this, I think Santander ought to have carefully considered whether a reputable business would likely ask a customer - especially an elderly customer - to pay for a new kitchen in cash.

So, considering all of this, I'm satisfied there were several signs that Mrs H could be at risk. Because of this Santander branch staff ought fairly and reasonably to have had some doubt about the purpose of the large cash withdrawal and asked further questions when Mrs H said that she was withdrawing the cash to pay for a kitchen.

It would appear Santander branch staff, may have recognised that the first withdrawal was not a run of the mill transaction. I say this because for the first transaction, the staff member recorded that Mrs H was read a script relating to scams. From what I understand this isn't a script that will be read to every consumer and for every transaction. Rather, the fact that this was read here suggests the staff member identified this as being a transaction where there was a higher than usual risk of the consumer losing money to a scam.

But I've thought carefully about whether reading this scam script meant that Santander did enough in this case. Clearly it didn't 'break the spell' as Mrs H went on to withdraw the cash, and Mrs H doesn't recall the detail of what she was told. So I think it's fair to conclude it didn't have much impact on her.

I think it's also important to highlight the Banking Protocol recognises that banks will often have to ask more detailed and specific questions to understand whether a customer might be a victim of fraud. And it recognises that customers are often convinced by the fraudster's story and so ultimately it may be necessary to ask more detailed questions or even escalate the matter to the police before a customer realises they are a victim of fraud.

Taking everything into account, I'm satisfied that in this case, the branch staff ought to have asked further probing questions, on top of the script. As I've previously explained there were several indicators that Mrs H might be the victim of fraud.

And I'm persuaded Mrs H was acting out of the belief that she was genuinely assisting in a police investigation, under the spell of the scammer. As such, I don't think it is surprising that the reading of a generic statement, the majority of which did not relate to her situation, didn't break that spell.

There's obviously a balance to strike, and I'm not suggesting that Mrs H should have been subjected to an interrogation by the branch staff. But the onus was on the branch staff to reasonably satisfy themselves that their customer wasn't about to become the victim of a scam. And in this case I think the staff ought to have had concerns and suspicions based on the circumstances of the transaction and what they had been told about it.

Had further questioning happened, I think it's more likely than not the story Mrs H had given would have begun to unravel. I say this because, while the scammer told her to use a specific reason for the withdrawal, based on what Mrs H has told us I'm not persuaded this story was particularly detailed or, in the circumstances of this case, that it would have stood up to more than the most basic level of enquiry. Indeed, it seems from Santander's records that by the time the scam was reported, the reason Mrs H recalled giving was paying for a bathroom rather than a kitchen. This suggests the details weren't even especially clear in Mrs H's mind.

Had the story unravelled in the way I think it likely would've, I believe the scam would more likely than not have come to light. Whether or not this would've been through further

questioning from the cashier, a manager or even a police officer is unknown. But I am ultimately persuaded Mrs H wouldn't have withdrawn the cash, and wouldn't have financially lost out as the result of a scam — had Santander taken the time to ask further questions as I think it ought fairly and reasonably to have done in all the circumstances, given the number of indicators that Mrs H might be at risk.

Finally, I've taken into account Santander's belief that Mrs H misled the branch staff when she asked to withdraw the cash. As I've already explained, I'm satisfied Mrs H was under the spell of the scammer. She was in my opinion carefully manipulated and coached into thinking she was helping the police. The Banking Protocol sets out that bank staff shouldn't just accept what a customer tells them because it recognises that been given a 'cover story' is a well-recognised feature of a scam. So I don't think Mrs H's actions, whilst she was under the spell of a scam, means that Santander shouldn't have done more, or that she shouldn't now be compensated.

Overall I'm satisfied that had Santander taken the steps I think it ought fairly and reasonably to have taken, the scam would have been prevented at the point of the first transaction. It follows that that I'm also satisfied that neither of the withdrawals would have taken place, and Mrs H would not have lost any of the money she did.

Had I reached different conclusions about the first cash withdrawal, I would in any event have upheld Mrs H's complaint about the second £4,600 cash withdrawal she made on the following day.

In all the circumstances, including the fact she had withdrawn £5,000 in cash the day before, Santander should, it seems to me, quite clearly have identified the second payment as a significant and unusual transaction and asked further probing questions. If it had, I'm satisfied that it's more likely than not that the scam would have been prevented.

impact on Mrs H.

Mrs H's representative has explained about the impact this event has had on Mrs H. He says Mrs H has since suffered from a sleep disorder as a result of the scam.

The bulk of that impact follows directly from the actions of the scammer. But I consider that Santander could and ought to have prevented Mrs H from losing money as a result of the scam. By stopping the financial losses Mrs H incurred, it is my finding that Santander could have significantly reduced the overall impact on Mrs H.

Considering everything, I think Santander should pay Mrs H £200 in compensation for the distress and inconvenience she experienced as a result of its actions - in addition to what it has already paid.

putting things right

For the reasons given above, I uphold Mrs H's complaint against Santander UK Plc. I do not think it was fair and reasonable for Santander not to refund the amount Mrs H lost through becoming the victim of a scam.

I now direct Santander to:

- refund Mrs H for the total of £9,600 she lost; less any sums already refunded.
- pay interest on that amount at the account interest rate, from the date of the withdrawals to the date of settlement. If Santander deducts tax from the interest element of this award, it should provide Mrs H with the appropriate tax deduction certificate.
- pay Mrs H £200 for the material distress and inconvenience she experienced, in addition to the £75 it has previously offered.

my final decision

My final decision is that I uphold Mrs H's complaint. Santander UK Plc should calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 1 December 2019.

Stephen Dickie
ombudsman