

The complaint

Miss B has complained that Santander UK Plc will not refund the money she lost after falling victim to a scam. She is also unhappy that as a result of the money not being recovered her account went overdrawn and was subsequently defaulted.

What happened

In June 2018 Miss B was the unfortunate victim of a scam. Miss B says she was contacted through an online tutor platform she was on, by an individual whose child she would be tutoring. Miss B says the child would be travelling down for the tutoring and that the individual's driver would be accompanying him.

Miss B was sent a cheque for £2,500 which she was told included her tuition fees, £1,400 which was to be sent onto the individual's driver and the remaining funds were for looking after the child. But unbeknown to Miss B at the time she was in fact in contact with a scammer.

On 6 June, Miss B attended a branch and paid in the £2,500 cheque. Later that same day Miss B set up a new payee through online banking and sent £1,400 to the details provided for the driver.

Miss B then received a message from Santander to say she was over her overdraft limit of £2,000. She called Santander to ask about this. Santander explained it can take up to six working days for a cheque to clear. She'd sent the £1,400 payment before the cheque had cleared so this had increased her overdraft balance. During this call Miss B asked about charges in relation to the overdraft and the agent informed her of what she'd need to pay into the account to prevent charges.

On 12 June, the cheque was returned unpaid which left Miss B's account £2,009.12 overdrawn. At this point, Miss B realised she'd been tricked, and she reported the scam to Santander on 13 June.

Santander contacted the bank she'd sent the £1,400 payment to (the receiving bank) to try and recover any funds, however, the receiving bank replied to say no funds remained. As a result, Miss B's account remained overdrawn by more than her overdraft limit. Her account entered the collection process in January 2019. Santander says this happened due to Miss B not managing the account within the terms and conditions of the account she held – that it must be her main account and be regularly funded with her salary or the overdraft can be removed. Santander said it had tried contacting Miss B numerous times to discuss the account but didn't receive any contact until September 2019 by which time the account had already been defaulted.

In September 2019 Miss B complained she'd been unaware the account was closed and disputed the balance. Santander said it wasn't liable for the scam payment Miss B had made.

Unhappy with this, Miss B referred the matter to our service. She's referred to calls from Santander but said she explained at the time she was busy with exams and a full-time job and, had little time for other things. She says she explained she would call back about the issue and that she was never told about timescales for taking action to prevent the account being defaulted. Miss B feels it is unfair her credit file has been impacted.

One of our investigators looked into things but he didn't recommend the complaint be upheld. In summary he didn't think the transaction would have looked sufficiently suspicious to Santander for it to have been expected to intervene to prevent it. Our investigator also didn't think Santander could've done anymore to recover the money once it was aware of the scam. While he noted £100 was paid towards the overdraft in May 2019, he couldn't see any further payment towards it or a regular payment into the account like Santander asked in the letters it sent. He said Santander sent several letters to Miss B at the registered address but that as no payment was made and, as it didn't hear from Miss B in response to the letters, he couldn't agree the default should be removed from her credit file.

Miss B doesn't accept the investigator's findings. She has raised a number of points including:

- That she'd received incorrect information multiple times.
- She should've been told it takes time for a cheque to clear.
- Miss B recalls Santander told her the money was in her account.
- She was told there was money in the recipient's account but was then told no funds remained.
- Compared with her usual transactions she thought the cheque credit should've appeared odd.

Having considered Miss B's additional comments, our investigator's opinion remained unchanged. He confirmed he'd received information that showed the funds had left the beneficiary account prior to the scam being reported on 13 June 2018.

He also acknowledged Miss B's reasons for not clearing the overdraft balance - which was because she was waiting for Santander to rectify the issue before taking further action. But when considering the letters Santander sent, the information it provided about the impact on Miss B's credit file if payment was not made and, that it did not hear from Miss B – he didn't think Santander's decision to remove the overdraft facility and apply the default was unfair in the circumstances.

As Miss B remains unhappy with the investigator's opinion, 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.

I'd like to assure Miss B that I've thought carefully about all the points she has raised within her complaint but that in setting out my final decision on this complaint I may not specifically address each and every point. I will comment on those I think are relevant to the outcome of this complaint.

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 be good industry practice at the time.

I'm sorry to hear of what's happened to Miss B, and I can understand entirely why she feels so strongly that her money should be returned to her. I accept that she's been a victim of a scam here. But having thought very carefully about Santander's actions, I think it did act fairly and reasonably in allowing the payment to leave her account. I also can't say Santander has made an error in applying the default following no payment in response to its letters. I'll explain why.

Should Santander have intervened to prevent the payment Miss B made?

In broad terms, the starting position in 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, and taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Miss B accepts she authorised the payment of £1,400. Santander had an obligation to follow her instruction. But there are some situations in which it should reasonably have had a closer look at the circumstances surrounding the payment – as I've explained. I consider that as a matter of good practice Santander should've been on the lookout for unusual and out of character transactions.

I've first thought about whether the transactions here were significantly out of character or unusual. I've looked at the account movements in the six months prior to the scam payment and while I recognise Miss B hadn't made a payment or credit of this size, I need to keep in mind that it is not untypical for consumers to make one-off transactions for this amount.

Having looked at the account movements in the six months leading up to the scam payment, I can see Miss B prior to paying in the cheque for £2,500 was around £440 into her overdraft. After making the payment of £1,400 Miss B's account balance was £2,009.12 – going just over her overdraft limit of £2,000. While I do note Miss B paid in the cheque of £2,500 prior to making the payment later the same day to the third party, I'm mindful cheques do not clear immediately and so when making the payment the funds would have utilised her arranged overdraft. I don't think this in itself ought to have caused Santander concern that Miss B's transaction was potentially connected to a scam.

Banks have to strike a balance between processing payments as per its customer's instruction and monitor accounts for unusual and potentially harmful activity. I'd like to assure Miss B that I've carefully considered her personal views about the payment made (cheque) - specifically her reasons outlined above. But, when taking all the above into consideration, I'm not persuaded the payment of £1,400 was so unusual or suspicious that Santander ought to have intervened in the particular circumstances of this case before the payment was processed. And while Miss B has said a cheque would've appeared odd compared to her usual transactions, I'm afraid I don't agree.

Here Miss B went into a branch and paid in a cheque which was made out to her (she was the recipient of the cheque). And I've not been provided with any information or reasons for Santander to refuse it on face value.

I am aware Miss B's commented the bank should have made it clearer about the cheque clearing timescales and that the cheque wasn't cleared straightaway. I've thought about this point carefully, but in any event, I think it is well known that cheques aren't cleared straightaway and that it can take at least until the next working day - if not longer for cheques to clear in an account. While I can't say exactly what Miss B was told about the cheque at the time, on balance, I think it is unlikely the agent would have said the funds would have been immediately available.

Further when Miss B paid in the cheque, I don't think there was an obligation for the bank to do more than it did.

I've gone on to think about whether Santander did what it should've done once Miss B reported that she'd been the victim of a scam. In order for me to be able to fairly ask Santander to refund the money to Miss B, I'd need to be satisfied Santander should have acted sooner in trying to recover the money. And if I don't think it acted soon enough, I need to decide whether it made any difference.

In this case, I've seen information which shows unfortunately the funds had already left the receiving account prior to the scam being reported on 13 June 2018. So, in any event, I don't think any more could have been done in this particular case to recover the funds.

I am sorry that Miss B has lost out, and I appreciate this is a lot of money for her to have lost. I also understand this whole experience was very frustrating and upsetting for her and she was the innocent victim here. But in the circumstances, I don't think I can fairly say Santander should refund Miss B the funds lost as I don't think it could reasonably have been expected to prevent this scam.

Overdraft facility and default

I will now turn to the removal of the overdraft and the default Santander applied on 8 August 2019.

The events have been outlined above under the background of this complaint, so I will not repeat them again here in detail. I've seen Santander sent numerous letters to Miss B. These included letters relating to her needing to make payment towards the overdraft and to her needing to make sure regular payments are made into the account to ensure the overdraft facility isn't removed in future. Santander also wrote to say regular payments into the account weren't being made.

I note a payment of £100 was made in May 2019 but following this no further payments were received. From what I've seen and been told, it appears Miss B could have afforded to pay more but that at the time she didn't want to pay the overdraft off until the issue was resolved

in relation to the scam payment. Miss B's said she felt Santander hadn't done much to try and get her money back.

While, I do recognise Miss B's personal views on this point, Santander had told Miss B it wasn't liable for the scam payment she'd made. And in any event, I'm mindful that an overdraft is a borrowing facility that a bank can contractually withdraw at any time.

Further letters were sent by Santander to Miss B following the £100 payment in May 2019 and prior to its letter of 3 July 2019. In this letter, Santander informed Miss B it was sending her a default notice due to her not having cleared the outstanding amount on the account. This letter also said that as well as the default notice, she would also receive another letter confirming that if she didn't repay the amount that it would inform the Credit Reference Agencies that she's defaulted on the account and that the default would remain on her credit file for six years.

On 4 July 2019, another letter was sent which said the overdue amount needed to be paid within 14 days. This letter explained that if the overdue amount was paid before the date shown, no further enforcement action would be taken in respect of the breach. It said that if Miss B failed to make the payment, Santander would demand she repay the total balance immediately and that it may also take legal action against her or refer the account to debt recovery agents.

Santander say no further contact was received from Miss B until September 2019 by which time the account had been defaulted.

Given the letters sent to Miss B by Santander, I'm persuaded it treated her fairly and reasonably in relation to her debt and the payments needed. I say this because, Miss B was sent numerous letters asking her to make payment. From the letters sent, she was told what she was required to do to prevent her overdraft limit being removed and to prevent the account from being defaulted. I note some letters also said that if Miss B couldn't pay to please get in touch and provided her with organisations she might find helpful, such as debt charities. But given what Miss B has told us about her not wanting to pay the overdraft off until the issue was resolved in relation to the scam payment, I'm not persuaded no payment was made due to her being unable to make payments. And while I understand from what Miss B's said she didn't consider the matter with the scam resolved, there was nothing further the bank could have done, and it made her aware of this.

Overall, I'm persuaded Santander acted fairly and reasonably in setting out what Miss B needed to do in respect of the overdraft. It follows that I can't say Santander has made an error in removing the overdraft limit or in applying the default following no payment in response to its letters.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 12 October 2021.

Staci Rowland
Ombudsman