

The complaint

Mr and Mrs M complain that Santander UK Plc have failed to refund £345,750 they lost as part of a scam.

What happened

Mr and Mrs M fell victim to an investment scam in 2019, where fraudsters posing as JP Morgan persuaded them to make the following international payments to a bank in Malaysia:

| Date | Payee | Amount |
|------------------|--------------------|-----------------|
| 10 July 2019 | JPM Global Trading | £100,000 |
| 12 August 2019 | JPM Global Trading | £45,750 |
| 3 September 2019 | JPM Global Trading | £200,000 |
| | Total | £345,750 |

Due to the size of the transactions, Santander called Mr and Mrs M before each of the payments were released to question them about what they were for. The bank read its investment scam script to Mr and Mrs M on each phone call, but the payments were processed as Mr and Mrs M were satisfied they were going to a legitimate payee.

However, it wasn't until Mr and Mrs M subsequently attempted to make another payment of £250,000 on 6 September 2019 that the scam was revealed. Before this payment was released, Santander asked more in-depth questions about the investments being made and the details of the company they were paying. It was then quickly discovered that Mr and Mrs M were attempting to pay a fraudulent clone of JP Morgan (according to a warning that had been placed on the Financial Conduct Authority (FCA) website). The bank attempted to recover the funds Mr and Mrs M had sent but unfortunately no money remained.

Mr and Mrs M complained that Santander should refund the money they lost as its line of questioning didn't go far enough when it first spoke to them about the investment. However, Santander refused to refund the money as it didn't think Mr and Mrs M had carried out sufficient checks and due diligence on whether the person they were speaking to was genuinely from JP Morgan. Unhappy with this, Mr and Mrs M referred their complaint to this service and the matter has been escalated to me to determine.

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 agree with the conclusions reached by the investigator and have decided to uphold it.

Santander is aware of our general position on a Payment Service Provider's safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.

It is common ground that the disputed payments were 'authorised' by Mr and Mrs M for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because the transfers were made by Mr and Mrs M using the legitimate security credentials provided to them by Santander. These must be regarded as 'authorised payments' even though Mr and Mrs M were the victims of a sophisticated scam. So, although they did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of their bank account, Mr and Mrs M are presumed liable for the loss in the first instance.

However, taking into account the law, regulatory 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 its customers were at risk of fraud (amongst 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; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.

I am satisfied there were enough 'triggers' in this case to have alerted a responsible regulated bank such as Santander that Mr and Mrs M's account was being subjected to unusual and uncharacteristic activity. There were reasonable grounds to suspect fraud from the very first payment of £100,000 due to the size of the payment in comparison with their usual pattern of spending, and therefore justify an intervention (such as phoning them in order to ask questions about the nature and purpose of the payments) – which indeed, Santander did for each of the payments made.

So, it is common ground that there were fraud triggers in this case because Santander's staff did in fact intervene. Accordingly, it's therefore a question of whether the bank did *enough* in all the circumstances with those earlier interventions.

Santander's fraud team called Mr M on 10 July 2019 when he attempted to make the first payment of £100,000. It asked him what the payment was for, to which he replied that it was for an investment bond. Santander then read out its scam script, where it said he should check the company's details on the FCA website. However, no further questions were asked, and the payment was processed.

At the time the payment was made, Santander ought to have had a good understanding of how investment scams commonly work. And given the size of the payment, and the fact that it was being paid to an international payee, I would have expected the bank to have asked additional questions about the context and purpose of the transaction. While it is not up to our service to dictate which questions a bank should ask, Santander could've, for example, asked how Mr and Mrs M had found the 'investment' and what research/checks they had

carried out to determine it was a legitimate. This would have formed part of a reasonable line of enquiry to protect a consumer from the potential risk of a prominent type of scam.

Had Santander asked such questions on 10 July 2019, I'm satisfied it would have become apparent at that point that Mr and Mrs M were falling victim to an investment scam – as indeed it did when the bank eventually asked further questions on 6 September 2019. During this call, Santander went further than simply reading its scam script and asked further probing questions such as:

- What sort of investment were they entering into?
- What paperwork did they have regarding the investment?
- What returns had they been promised and what had they received so far?
- How do they get in contact with them?
- What is the email address and contact number they use?

After Mr M disclosed the telephone number he had been calling, Santander said a simple Google search of the contact number and email had taken them to the FCA's page showing that these were the contact details being used by a fraudulent clone of JP Morgan. After some further research by Santander's agent, this was confirmed and Mr and Mrs M then didn't transfer any further funds after the agent issued them with a scam warning.

So, all it took was for Santander to run a quick search of the contact details Mr and Mrs M had been given in order to discover that they were being scammed. So, had the bank entered into a similar line of questioning from the very first payment being made on 10 July 2019 – which I think it reasonably should have done in the circumstances – Mr and Mrs M would not have lost any of their money to this scam. I'm satisfied it would have likely been apparent that they were dealing with a scammer, which would have led to Santander issuing a scam warning sooner and have prevented them from making any further payments (as it did on 6 September 2019).

In other words, but for Santander's failure to make further enquiries from the first £100,000 payment, it would have been on actual notice that Mr and Mrs M were going to suffer financial harm from fraud. Therefore, I'm satisfied the bank's failure to ask probing questions from the outset can be described as the *proximate* cause of the loss in these circumstances, and that this loss would have been reasonably foreseeable to the bank, such that it should refund the money Mr and Mrs M have lost.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. I have duly considered whether Mr and Mrs M should bear some responsibility by way of contributory negligence. However, in this case, I do not think they could have foreseen the risk that the company they were dealing with was a scam and simply did not appreciate what they were doing or the consequences of their actions. Moreover, I do not place too much weight on general but arcane information in the public domain, because of the information imbalance between financial professionals and ordinary consumers.

Mr and Mrs M said they researched the company they thought they were investing in and considered it to be a legitimate opportunity. The fraudsters were using the name and reputation of a well-known investment bank, which lured Mr and Mrs M into thinking there was little risk they were being scammed – particularly when the scammers had closely cloned JP Morgan's paperwork and even communicated via email addresses that appeared to be from the bank.

All in all, I am satisfied there was no contributory negligence on this occasion and Mr and

Mrs M were simply the unwitting and blameless victims of a clever fraudster. The bank was the professional in financial matters; Mr and Mrs M were laypeople. Therefore, I do not consider it would be appropriate to reduce compensation in these circumstances.

Mr and Mrs M have also explained the substantial impact losing their money has had on their lives. This distress and inconvenience they've suffered could have been avoided if Santander had prevented the scam from the outset when they had the opportunity to do so. Therefore, I'm satisfied an award of compensation is appropriate. Our investigator recommended £300, which I also consider to be fair compensation in these circumstances.

I also note that the monies paid to the scammer from Mr and Mrs M's joint account had been transferred in from their savings account(s). So, rather than awarding 8% simple interest per annum, I consider it would be fair and reasonable for Santander to instead pay interest on the disputed payments at the applicable savings account rate.

My final decision

For the reasons given above, I uphold this complaint and direct Santander UK Plc to:

- Refund Mr and Mrs M the disputed payments totalling £345,750 made from 10 July 2019 onwards, minus what has already been credited back to Mr and Mrs M from the scammer;
- Refund any fees and charges applied to Mr and Mrs M's account as a result of the disputed payments;
- Pay interest on the disputed payment amounts at Mr and Mrs M's savings account interest rate(s) from the date of loss to the date of settlement (less any tax property deductible).
- Pay Mr and Mrs M £300 compensation in recognition of the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 8 March 2022.

Jack Ferris
Ombudsman