

The complaint

Miss B is unhappy that Santander UK Plc will not refund the money she lost as the result of an authorised push payment (APP) scam.

Miss B's complaint has been brought by a representative, for ease of reading I will refer solely to Miss B in this decision.

What happened

All the details are well known to both parties and were set out in the investigator's view of 12 January 2023 - so I won't repeat them in full here. In summary, Miss B was the victim of an email intercept scam which resulted in her making a payment of £23,610 on 18 December 2017 to a fraudster. She believed she was paying the solicitor who was arranging the lease extension of her flat. The same solicitor had managed her purchase of the property between May and August 2017. But a fraudster had intercepted the email correspondence and provided their account details for the payment.

Miss B says Santander asked no questions about the purpose of the payment, and did not provide any effective scam guidance.

Santander declined Miss B's refund claim saying she had not carried out sufficient checks before making the payment and the branch had a full scam chat with Miss B before the payment was made.

Miss B wants the £23,610 refunding; £500 compensation; and for Santander to cover any related legal costs.

Our investigator did not uphold Miss B's complaint. He said Santander should have identified the transaction as unusual and discussed it with Miss B. As there is no record of the discussion that Santander says happened, he considered the most likely outcome had the bank done what it should have. And he did not think had Santander asked a proportionate level of questions it would have broken the spell of the scam. Or that it would have decided based on Miss B's likely responses to refuse to make the payment. He also felt Santander had done what it should have to attempt to recover the funds once it became aware of the scam, but unfortunately they were no longer in the beneficiary's account.

Miss B raised a number of objections to this assessment. She said, in summary, had Santander intervened effectively it would have made a difference. She said all Santander did was to flag that the account details she initially had were for international payments. When she returned to the counter with UK details no questions were asked about the payment and no advice was given. She says the branch should have asked about the purpose of the payment; whether it was a new payee and if Miss B had been provided with account details. She thinks Santander ought to have been concerned that Miss B had paid the solicitor before, but using different account details – and that for this payment she had seemingly been given two new sets of details. Had it asked to see the email chain it should have been concerned the solicitor was not contactable by phone. Miss B also argues that Santander failed to adhere to the Banking Protocol.

Our investigator explained in more detail why he still felt an appropriate intervention would not have changed the outcome. He said Miss B was expecting to make a payment of this amount to her solicitor at this time. She would have been able to clearly explain this. She would have been able to show the email she received after speaking to the receptionist that confirmed the account details for the payment. He could find no evidence the solicitor had said they could not be contacted by phone – and Miss B could have confirmed she had just spoken to the firm. Finally, Miss B could have asked Santander to check the details in the email with those she had used before.

Miss B disagreed, she felt suggesting she should have asked the bank to check the details matched those she had used before to be placing a high burden on her, the bank should have done this. She asked for an ombudsman's review so the case was passed to me.

I reached a different conclusion to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send any comments by 25 May 2023.

Extract from my provisional decision

In this case I currently think Santander ought to be held liable for the transaction. I'll explain why.

Much of the discussion to date on this case has focused on the questions Santander ought to have asked of Miss B at the time of the transaction – and whether they could have prevented the scam through proportionate probing. I note Santander says it had a full scam chat with Miss B before processing the payment, but it hasn't been able to give any detail about this conversation and Miss B says she was asked no questions. So I think it is reasonable to adopt the same approach as the investigator and consider what would most likely have happened had the bank intervened effectively. I will return to this.

But first I think it is important to look in more detail at the failure of the bank to stop and review the transaction. Its investigation notes dated 3 January 2018 say 'payment did not detect'. Given the value and the fact it was to a new payee – particularly when there were other high value payments in August purportedly to the same solicitor but using different account details – I would have expected this to trigger additional checks by the bank.

And it seems there are internal checks Santander could have carried out, but failed to, when Miss B provided the new account details. I think these could have prevented the scam. I say this as it was Santander's own internal checks that identified the payment as a scam on 27 December 2017. It seems the transaction was then flagged to Miss B as concerning, with the explanation that she had paid a personal account, not a business account. Santander's investigation notes show the payment was picked up as a likely 'payment diversion' due to what it knew about the beneficiary account (also held at Santander). Given it most likely had this information at the time Miss B made the payment it follows I think it ought to have declined to follow her instructions.

Or, at the very least asked it should have asked more questions than its 'full scam chat' must have included. Had it asked Miss B if she was aware it was a personal account, not a business account, I am certain this alone would have broken the spell of the scam. She has told us the receptionist told her to use the same details when she called the solicitors after Santander queried the details she first tried to use, and such an intervention would have most likely led Miss B to recheck the details – either by asking Santander to check them against previous payments or by calling the receptionist back.

In addition, had Santander intervened effectively it would have noted the high value payments Miss B had made to the same solicitor before used different account details, so it should have suggested she validate the change given her previous payments were legitimate. Again, as Miss B had been told to use the same details as before this could have broken the spell of the scam.

I anticipate Santander will argue that Miss B authorised and willingly made the payment. But, as it knows, this does not change its obligation to protect its account holders from fraud. I assume it will also argue she should share some responsibility for her loss as she did not carry out sufficient checks before making the payment. But I am not persuaded that is the case in these circumstances.

Miss B went ahead with the payment based on what appeared to be a legitimate email from her solicitor containing information only she, her parents and the solicitor were party to. It was a transaction she was expecting to make – the money needed to fund it had credited her account a few days earlier. She did what I could fairly expect a lay person to do in the circumstances. Santander needs to take into account that it is the expert in fraud prevention, and not Miss B. And in this case, I am persuaded it had access to the information needed to prevent the scam succeeding.

Finally, Miss B told us that by the time she had saved up the money again to extend the lease it was £6,399 more expensive. But I cannot fairly find Santander should be held liable for this increase in cost. Miss B waited three years to extend her lease - and whilst I understand that she had to save up the money after the scam, she decided that was the way she wanted to finance the extension thereby increasing the price significantly. There would most likely have been other less expensive ways to secure the extension sooner.

I then set out what Santander would need to do to put things right.

Miss B replied and accepted my provisional decision. Santander did not respond.

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 have also taken 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. To note, as the payment pre-dates the Contingent Reimbursement Model (CRM) code its principles do not apply in this case.

Neither party sent in any new information in response to my provisional decision so I have no reason to change the findings or outcome I set out in it.

It follows I find Santander should be held liable for the transaction.

Putting things right

Santander must pay Miss B £23,610. It should add 8% simple interest a year from the date of the payment until the date of settlement*.

*HMRC requires Santander to deduct any tax from any award of interest. It must give Miss B a certificate showing the deductions if she asks for one.

My final decision

I am upholding Miss B's complaint. Santander UK Plc must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 23 June 2023.

Rebecca Connelley
Ombudsman