

## The complaint

Miss S is unhappy Santander UK Plc will not refund the money she lost as a result of a scam.

## What happened

Both parties are aware of the details of the scam so I won't repeat them in full here. In summary, Miss S made payments to a money transfer service on 31 January 2023. These were:

time	value, £	merchant	payment method
13.47	1,500	TransferGo	credit card
13.49	1,428	TransferGo	credit card
13.51	1,428	TransferGo	credit card
13.53	1,150	TransferGo	credit card

At the time, she believed she was paying a travel agent for flights. Miss S says she only authorised three payments and when she saw the duplicate payment for £1,428 she checked with the travel agent she would receive a refund but at this point they ended contact. Realising she could be the victim of a scam she reported this to Santander. Miss S says the bank then misled her saying the transactions could be reversed.

Santander declined Miss S's claim for a refund saying she had authorised the payments. It explained why neither the chargeback process nor the provisions of Section 75 in the Consumer Credit Act 1974 could facilitate a refund for Miss S either. It offered £50 compensation as it had not managed her expectations effectively when she reported the scam. Miss S rejected this.

Our investigator upheld Miss S's complaint in part. She acknowledged Santander had placed an automated call to check Miss S recognised the first payment. But she thought by the third payment it ought to have made direct contact with Miss S. And she felt an effective intervention would have stopped any further payments. She found that there was nothing more Santander ought reasonably to have done to try to recover the money. Finally, she said £50 was fair to recognise the bank's service failings when Miss S reported the scam.

Both parties disagreed with this outcome. Miss S said, in summary, Santander should have done more to protect her – she had never made payments to a money transfer service before - and then it should not have not backtracked when it said the payments could be reversed. She thought she was protecting herself using her credit card and a reputable travel company. This has significantly impacted her mental health.

Santander said the payments were not large, nor was the total, and they were in line with typical spend on travel. Its system had flagged the first payment and Miss S confirmed it was genuine. So it believes had it contacted her again she would have said to go ahead and release the payments. As the amounts were plausible for flights it cannot see what more it

could have done to prevent Miss S from making the payments. It says Miss S should have carried out her own due diligence before proceeding.

### **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 accept that these were authorised payments even though Miss S was the victim of a sophisticated scam. She responded to the automated call and completed in-app confirmation that she had requested the payments that were made. So, although she didn't intend the money to go to the scammers under the relevant regulations, Miss S is presumed liable for the losses in the first instance. However, it doesn't stop there.

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, Santander should:

- 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.

So to decide this complaint I have considered if Santander ought to have detected the transactions as unusual and so made direct contact with Miss S before processing her request(s). I note it made an automated outbound call when Miss S tried to make the first payment and she confirmed she recognised the transactions so it was released.

However, like the investigator, I think by the third payment a pattern had emerged which should have triggered a further intervention from the bank. It is the expert in fraud prevention and whilst it can be argued the transaction values were not unusually high, I find there were other characteristics that made this pattern of spend unusual for Miss S. The payments were made in rapid succession and Miss S had not previously used a money transfer service.

This means I need to consider what would most likely have happened if Santander had spoken to Miss S. Had it asked her the questions I would expect it to in order to understand the basic context of the spend – what the payments were for, why was she making several payments rather than one, why was she paying a money transfer provider and not the travel agent directly – I think the spell of the scam would most likely have been broken. I have no reason to believe Miss S would not have relayed information that would have alerted Santander to the possibility that she was at risk of financial harm – things like the fact that she had been advised to make smaller multiple payments to avoid interest, and that if she also paid for her parents' tickets now that her card had been approved she would receive a discount.

This means I find Santander liable for Miss S's losses from the final two payments. I've considered whether there is any evidence to suggest that the refund should be reduced on the basis of what's known as contributory negligence. I don't think there is in this case. Santander suggests Miss S ought to have completed more thorough due diligence but as it

seems the scammer was operating as a clone of a legitimate company, I am not sure she would have discovered anything to concern her. And I don't think the fact that she herself didn't find it unusual she was making multiple payments via an intermediary means she should be partially liable. Santander is the expert in fraud prevention, not Miss S.

Miss S has raised that her payments should be covered under the CRM (Contingent Reimbursement Model) code but credit card payments are not covered by this code.

I have then considered if Santander did all it should to try to recover the money once Miss S reported her losses. I find that it did. As Miss S knows from her own contact with TransferGo the money was moved on quickly. But as they were credit card payments I have considered if the options for potential recovery that were available to Santander.

In the circumstances of this case I don't see that Santander could have done more. A chargeback claim would most likely not have been valid as the merchant had in essence provided the services expected. So I think it was reasonable for the bank to decide it did not meet the chargeback criteria. And as the debtor-creditor-supplier chain was not intact a claim could not be made under Section 75 of the Consumer Credit Act.

Miss S is also unhappy that when she reported the scam, she was led to believe the transactions would be reversed. I have listened to the call and the bank did not say it would be reversing the payments. It confirmed it would block the card and raise a scam claim for the transactions. I note Miss S says she was sure it did say this, maybe on subsequent calls, but even if that was the case, that would not necessarily be a reason for me to change the conclusion I have reached and award a refund of all payments. I would expect the bank to apologise if it gave any inaccurate information and to address any training needs. It accepts *'Miss S's expectations were not necessarily managed when first reporting the matter'*. So it apologised and offered £50 compensation for any distress this caused. I think this is fair and reasonable in the circumstances.

In summary, I don't think Santander acted fairly by refusing to refund all of the transactions and it must settle the complaint in the way I have outlined below.

### **Putting things right**

Santander should:

- refund the last two payments to Miss S's account;
- rework the account as if these two payments had never taken place;
- if this results in a credit balance pay 8% simple interest\* per year on that credit balance from the date it would have been created had the refunded transactions not taken place to the date of settlement; and
- pay Miss S the £50 compensation offered once she confirms bank account details for this payment.

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

### **My final decision**

I am upholding Miss S's complaint in part. 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 S to accept or reject my decision before 28 August 2023.

Rebecca Connelley  
**Ombudsman**