

## The complaint

Mr C complains that Santander UK Plc did not refund a series of payments he lost to a scam.

## What happened

Mr C was contacted by an international court and was told he was due compensation totalling €6,672.51 following a court case. This was in relation to a genuine company which Mr C had been involved in and lost money to, so he felt it was legitimate. He received official looking court documents and was told he had to pay various fees and taxes before the funds could be released. Mr C made the following payments:

Date	Amount	Other
29/6/21	£811.20	
6/8/21	£3,192.20	This was reversed on 19/8/21
24/8/21	£1,560	
24/8/21	£1,560	
25/8/21	£199.68	
18/9/21	£1,560	
18/9/21	£1,144	
23/9/21	£988	
25/9/21	£695.25	
27/9/21	<b>£685.13</b>	<b>credit</b>
19/10/21	£1,253.20	
21/10/21	£1,040	

Following the final two payments, Santander contacted Mr C to ask some questions about the payments and what they were for. As a result they had concerns over the payments and felt they may be connected to a scam, however Mr C did not agree. Santander froze the account and asked Mr C to go into a branch to discuss it further. When Mr C visited the branch, the staff invoked the Banking Protocol and telephoned the police who came and spoke to Mr C. He remained adamant at that time that it was genuine, and it wasn't until two days later that he accepted he had been the victim of a scam.

Santander explained at the time in November 2021 that as the payments he had mentioned as part of the scam were debit card payments, they weren't covered under the Lending Standards Board's Contingent Reimbursement Model ("CRM") code, which gives additional protection to victims of authorised push payment ("APP") scams like Mr C. And as the payments had been processed by a legitimate merchant, there was no grounds to recover the funds via a chargeback claim.

Mr C raised a further claim in March 2023 via a representative, but Santander still did not agree they needed to reimburse him with the lost funds. So, he referred the complaint to our service. Our Investigator looked into the complaint and did not agree that Santander needed to provide a refund. In summary, they did not think the payments in question were so unusual when compared to Mr C's genuine account activity that they warranted intervention from Santander prior to them being processed. And even if Santander had provided a warning at an earlier date, they felt Mr C was so convinced by the scam that a warning would not have deterred Mr C from making the payments at that time.

Mr C's representative disagreed with the outcome as they felt the payments did appear to be unusual. As an informal agreement could not be reached, the complaint has been passed to me for a final decision.

### **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 Investigator for largely the same reasons, and I don't direct Santander to reimburse Mr C in the circumstances. I'll explain why in more detail.

I'm satisfied Mr C has been the victim of a cruel and elaborate scam and I'm sorry he's had to experience this. What I must decide is if Santander should reasonably have done more to protect him and his accounts in the circumstances.

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.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr C authorised the payments in question, as he thought they were fees related to compensation. So, while I recognise that he didn't intend the money to go to scammers, the starting position in law is that Santander was obliged to follow Mr C's instruction and process the payments. Because of this, he is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Santander did enough to try to keep Mr C's account safe.

I've reviewed Mr C's statements for the months leading up to the scam and compared the scam payments to the genuine account activity to see if they appear suspicious or out of character. In doing so, I can see that Mr C had made some higher value payments in the months prior to the scam and while the scam was ongoing there were genuine payments of similar amounts debiting the account. For example, there was a payment of £4,750 a few months prior to the scam, and a number of genuine payments at around £1,500 during the scam.

With this in mind, I don't think the value of the payments themselves should have been a warning to Santander that Mr C was at risk of financial harm, as they matched the general spending pattern of Mr C's account. In addition, the payments were relatively spread out over a four-month period. Generally speaking, I would expect a bank to intervene when a number of payments have debited an account in quick succession, but that does not appear to have happened in this case. Having carefully considered everything, I don't think Santander needed to intervene any earlier than it did, so I don't think it missed an opportunity to reveal the scam at an earlier point.

I can see that Santander did intervene when Mr C had consistently made payments over a four-month period, and when they asked a few questions, they had concerns over Mr C's financial safety. I think they acted reasonably when they then froze Mr C's account and asked him to visit the branch. And when they saw Mr C was not trusting what they said, they invoked the Banking Protocol as I would have expected them to do in the circumstances. Even after speaking to the police, it still took a few days for Mr C to trust what he was being told which shows just how convinced he was by the scam.

As the payments were made via debit card, the only way to recover them would be via a chargeback. A chargeback is part of a voluntary scheme run by the card issuers, and there is no guarantee of success if one is raised. We would only expect a bank to raise a chargeback claim on behalf of a consumer if there was reasonable chance of success.

A chargeback is a way to settle a dispute between a consumer and a merchant. In this case, the merchant involved in the payments was a payment service provider, who facilitated the transfers for Mr C. Meaning they carried out the service requested of them by Mr C when it processed the transfers for him. Because of this, I don't think Mr C had a valid chargeback claim in the circumstances, so I don't think Santander made an error when it did not raise one.

On balance, having carefully considered everything available to me, I don't think Santander needed to intervene in the payments any earlier than it did. So, I don't think it missed an opportunity to meaningfully reveal the scam at an earlier point.

### **My final decision**

I do not uphold Mr C's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 May 2024.

Rebecca Norris  
**Ombudsman**