

The complaint

Mr A complains that Santander UK Plc have not refunded the money that he lost when he was the victim of a scam.

What happened

The details of this complaint are well known to both parties, so I will not go into every detail of what happened here. But in summary, both parties accept that in September 2023 Mr A sent £10 followed by £1,000 to an account he held with an e-money provider, 'R', which he then lost as a result of a scam.

Mr A was looking online for a loan. He applied for a loan and shared his personal information including identification documentation during this process. The purported loan company said in order for him to have a loan he would need to transfer 10% of the loan value, £1,000, into an account he would need to set up with 'R' to prove his solvency and ability to repay the loan. He received a loan agreement and believing everything to be legitimate, he set up the account and initially sent £10 from his Santander account to the new account with 'R'. The following day, Mr A sent the £1,000 payment. Santander intervened with this payment and had a conversation with Mr A in which they gave some scam warnings and he confirmed the payment was genuine and that he wished to proceed. Mr A then received a call purporting to be from the loan company, and was told he needed to purchase cryptocurrency and he would get the loan within half an hour. He then tried to call them and the line was not working, so Mr A realised he had fallen victim to a scam and got in touch with Santander.

Santander looked into Mr A's complaint and declined to refund his losses. They said that the case was not covered by the CRM code, a code which provides refunds to victims of scams in some circumstances, because the payment went to an account in his own name. They said the loss had not occurred on his Santander account, but instead was down to onwards transactions. They said they had not done anything wrong in allowing the payment to proceed after their intervention as there was nothing of concern in their phone call with him, and that they had followed the correct procedures after the scam was reported.

Unhappy with their response, Mr A brought his complaint to our service. One of our investigators looked into what had happened and did not recommend that his complaint be upheld. In summary, they thought that Santander had acted proportionately in the call they had with Mr A about the first payment and that they were not required to further intervene in the payment processes.

Mr A remained dissatisfied. He felt that we were saying it was his fault he was scammed because he did not disclose that the 'R' account was set up in order to get a loan. As no agreement could be reached, the case has been passed to me to decide.

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 would like to start by saying I was sorry to read about Mr A falling victim to a cruel and callous scam. I can tell from my review of the evidence that this has had a significant impact on Mr A, and I'd like to offer my sympathies for what he has been put through.

My role here is to assess Santander' actions against what they should have done – and having done so, I don't think it would be fair and reasonable for me to hold Santander liable for Mr A's loss. So, having considered everything, I am not going to uphold Mr A's complaint. I do appreciate how disappointing this will be for him, but I do not think I can fairly say that Santander should reimburse him with the money that was unfortunately lost to the scammers. I'll explain why.

There is no dispute that the transactions were authorised payments, even though Mr A was the victim of a sophisticated scam. Mr A made the payments himself and under the relevant regulations, and the terms and conditions of his account, Mr A is presumed liable for the loss in the first instance.

But I've also taken into account the relevant law, regulators rule and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. In this case, this does not include the Lending Standards Board Contingent Reimbursement Model ('CRM') Code as this code requires the payment to have gone directly to a scammer, and in this case the funds went to an account Mr A set up and had access to in his name with the legitimate e-money institution, 'R'. But based on the other relevant rules relating to authorised push payment scams, I think 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 and out of character transactions or other signs that might indicate that 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.
- 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, I consider as a matter of good practice, Santander should have been on the lookout for unusual and out of character transactions. In this case it is not in dispute that the payment flagged on Santander's systems so the payment was pending and Mr A was asked to get in touch with them. So what I need to consider is whether their intervention was good enough taking into account the risks associated with the payment, or whether they ought to have done more to prevent Mr A's losses.

I've listened to the call between Mr A and Santander regarding the £1,000 payment and thought carefully about it. During the call, Mr A was asked a series of questions by Santander and confirmed that he:

- was sending money to his own account, which he alone had set up the week before;
- had received a card for the account, which was a current account with a loan facility with an interest rate of around 5%;
- Checked the account details were correct by sending a tester payment of £10, which he had then sent back to his Santander account;
- set up the account online after downloading their app;
- had not given anyone access, including remote access to his devices, which would allow them to use this account; and
- had checked that 'R' were a legitimate business and had no concerns about them.

Santander also discussed scams with Mr A, and explained that real businesses would never ask him to lie to his bank. They said that if he was not honest with them, it could impact his liability should it be found that the payment was being made as a result of a scam. Mr A at no point mentioned any other business, or that he was making the payment in order to demonstrate that he could repay a loan.

I think that the questions Santander asked Mr A were detailed, probing and proportionate in the circumstances. Whilst £1,000 is not an inconsequential figure, it would not be an unusual amount of money for someone to move between their own accounts and so I am mindful that had an intervention not occurred, I would not have said that Santander had done something wrong. With this in mind, I think the intervention was good – the questions allowed Santander to look for some of the common hallmarks of scams. In response, I did not hear anything that I think Santander should have picked up on to know that Mr A was falling victim to a scam. There was no mention of a third party loan provider, or cryptocurrency (indeed at the point of the call, it does not appear Mr A would have been asked about purchasing cryptocurrency). Mr A only discussed 'R' and a credit facility, and the checks he has made to ensure 'R' were a legitimate business. He did not give any indication that a third-party business was involved, or that there was someone who had remote access to his account or device. So, based on what Mr A told Santander in the call I do not consider that there was anything Mr A said that was of such concern that they ought to have done more, or considered stopping the payment altogether. So it follows that I do not think that Santander acted incorrectly here, and so it would not be fair and reasonable for them to refund Mr A's losses.

I've also considered what attempts Santander made to recover the funds from the scammers. Unfortunately, as the payments went to an account in his name before being sent on to the scammers, Santander would not be expected to try and recover the funds. So I cannot say they have done anything wrong here.

In summary, I understand that Mr A believes Santander should have gone further and should have prevented the scam – but I am afraid I don't agree. Unfortunately, Santander are not able to identify every scam. I would expect them to look out for the hallmarks of scams and recognise these red flags, but I am not persuaded these red flags existed in this case after Santander spoke to Mr A. I would also expect them to advise their customers about some common hallmarks of scams, and the risks involved in sending money – and I am satisfied Santander did this in this case. So, whilst I don't doubt that Mr A has been the victim of a cruel and callous scam – it is ultimately the scammers who are at fault here, and I do not find that it would be fair and reasonable to ask Santander to refund his losses.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 November 2024.

Katherine Jones
Ombudsman