

The complaint

Mr G is unhappy Santander UK Plc (“Santander”) hasn’t reimbursed him after he transferred money to pay for a holiday home rental that turned out to be a scam.

What happened

The details of the complaint are well known to both parties, so I won’t go into too much detail here.

In summary, Mr G was the victim of a scam. Mr G was tricked into sending £3,225.88 (€3,645) to pay for a holiday home rental that he thought he had found on a genuine and well-known rental accommodation site online. Unbeknown to him at the time, he was actually dealing with a scammer and a fake website imitating the genuine one and the payment was made internationally to an account in Italy.

Mr G made the payment online so there was no interaction with anyone from Santander. However, Mr G feels that Santander should’ve identified the payment he was making as an unusual payment as it was out of character for him. He considers Santander ought to have discussed it with him before it allowed it to leave his account. He believes that had Santander done so, the scam would’ve come to light, and he wouldn’t have gone ahead with the payment.

Santander doesn’t agree that it could have done anything more than it had to protect Mr G from the scam. It said the payment hadn’t raised any suspicions at the time. Santander said it had contacted the receiving bank when Mr G reported the scam, but no funds remained in the beneficiary’s account.

Mr G disagreed with what Santander said and so he brought his complaint to this service and one of our Investigators looked into things.

Our Investigator didn’t uphold the complaint. She was inclined to agree with Santander that there wasn’t anything about the payment that meant Santander should’ve questioned it at the time. And she didn’t think it should’ve stood out to Santander as suspicious enough to warrant further questioning before it was allowed to leave the account either. She also thought Santander had done all it could to recover Mr G’s funds once notified of the scam but unfortunately Mr G’s funds had already been removed from the receiving account.

Mr G didn’t agree with the Investigator’s findings. He reiterated that the transaction should’ve stood out to Santander as it was significantly higher than his normal transactions and was being made to a new payee and was an international payment.

As the matter wasn’t resolved, it was referred to me to review and make a final decision on the outcome of Mr G’s complaint.

I considered the complaint and issued a provisional decision as I was minded to reach a different outcome to that of our Investigator.

In summary, I was satisfied that the payment Mr G was making was significantly out of character for his account and its typical usage and therefore should have indicated to Santander that there was a potential risk facing Mr G. I considered Santander should have carried out some additional checks to make sure all was ok. And had Santander stopped the payment for further questioning or additional checks, then I considered it would have been able to prevent Mr G's losses. I also didn't consider Mr G should bear any responsibility for his losses.

Both parties had until 23 February 2024 in which to respond to my provisional decision and provide any more comments and evidence they wished for me to consider.

Mr G accepted my findings. Santander responded and considered Mr G should bear some responsibility for the loss as it considered he did not stay within the parameters of the online rental site.

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 see no reason to depart from my provisional findings. I'll reiterate my findings below and will also comment on the additional point Santander raised.

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 have been good industry practice at the time.

It is the case that Mr G authorised the transfer in dispute and that's accepted by all parties. And under the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr G is responsible for them. That remains the case even though Mr G was the unfortunate victim of a scam.

However, 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, 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 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 payment service providers are generally more familiar with than the average customer.*
- 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.*

Taking the above into consideration, in this case, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr G when he made the international transfer or whether it should have done more than it did.

Did Santander act fairly and reasonably in this case?

As I've explained, I consider that, as a matter of good practice, Santander should have been on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

Here, Santander have said the payment didn't flag on its fraud detection system, so it didn't take any additional steps or make any additional checks before processing the payment Mr G made, aside from a generic fraud warning that was shown as part of the online process when Mr G made the payment.

Having carefully reviewed this aspect, when I consider the account usage, I think there was a deviation from how the account normally operated. I consider the payment Mr G made was significantly out of character for his account and its typical usage and therefore should have indicated to Santander that there was a potential risk facing Mr G.

I say this because having reviewed the statements for the previous 12 months, this was the largest payment Mr G had made. The next highest payment Mr G made was a £2,000 card payment made to another UK based payment service provider. And the only other things of note when looking at the statements in terms of amounts and faster payments made from the account are a regular monthly direct debit mandate for his mortgage, some faster payments / transfers to himself or his wife – which were existing payees.

So here, Mr G hadn't really made any faster payments to other payees and certainly not an international payment or made payments of the amount he sent when he sent money as a result of the scam. So I'm satisfied there was a clear deviation from how the account was usually run. And this should have reasonably caused Santander to be concerned that there was a potential risk facing Mr G and it should have taken some additional checks before processing the payment.

Making an international payment can carry more of a risk for a customer, whether as a result of them falling victim to fraud, or possibly as a result of a mis-directed payment – with both scenarios Santander will be aware that trying to recover or recall funds that have been sent internationally carries little prospect of success. It is dependent on the respondent firm and there can also be jurisdictional issues and regulatory hurdles that means a respondent firm doesn't even acknowledge any contact it receives.

So to satisfy itself that Mr G wasn't potentially at risk, I consider Santander should have carried out some additional checks to make sure all was ok with the payment he was attempting. Whether to query the purpose, in order to satisfy itself there wasn't a risk of its customer being the victim of a scam of one type or another, or to check how the banking details were obtained to ensure the funds would be correctly sent and received.

And had Santander stopped the payment for further questioning or additional checks, as I think it ought to have done, I think it would have been able to prevent Mr G's losses. Santander are the experts here and have the knowledge of how typical scams look and feel.

Had it sought the purpose for the payment – that being a rental holiday home it could have been an easy exercise to make sure it was legitimate, so probed a little further as to how he came across the company and how he received the payee details. Mr G would have explained that it was through a well-known rental accommodation site – and Santander should or would have known that Mr G making an international payment to a payee wasn't

how the rental accommodation company operated and therefore that there was a high chance Mr G could be falling victim to a scam.

It could have asked Mr G to carry out some additional checks – such as contacting the genuine company through a legitimate number or email. I have no doubt Mr G would have done so. It wasn't an insignificant amount – and was a holiday for him and his young family. Had Mr G carried out some additional checks in light of this information, it would have quickly become clear that fraudsters were impersonating the genuine rental accommodation company and Mr G wouldn't have proceeded to make the payment. So I think had Santander pointed out some of the hallmarks of these types of scams and that it was more likely than not a scam and explained what checks Mr G could take to verify things, the loss could have been prevented.

Should Mr G bear some responsibility for his losses?

In reaching my conclusions about what is fair and reasonable in this case, I have also considered whether Mr G should bear some responsibility for his losses also. In the circumstances of this case I don't think he should, and I'll explain why.

Mr G wasn't aware of the type of scam he was falling victim to nor how they work, and I can see why at the time he thought things seemed ok. Mr G was simply the victim of a cruel scam. I am satisfied he believed he was liaising with a genuine company at the time. I'm satisfied Mr G didn't foresee the risk of this sort of harm and was not partly to blame for what happened, when I also consider the absence of any additional checks or warnings from Santander. So, on the particular facts of this individual case, I don't consider it fair to reduce the compensation payable to Mr G.

Recovery of the funds

For completeness, I have also looked to see whether Santander did all it could to recover Mr G's funds once notified of the scam. What it could do here was limited, in that it could only act quickly in contacting the beneficiary bank to see if any funds remained. I am satisfied that Santander took the necessary steps required of it in seeking to try and recover any funds, once notified of the scam and did so in a timely manner. Unfortunately it received a response that no funds remained that could be returned to Mr G.

Summary

Overall, I consider Santander could have done more to prevent Mr G from the risk of financial harm. Had it done so and had Santander carried out some additional checks or asked some questions around the purpose of the transfer and advised what checks he could make to ensure he wasn't falling victim to a scam, I'm persuaded it is more likely than not the scam would have come to light, and Mr G's loss could have been prevented.

Santander consider Mr G should bear some responsibility for the loss – as he didn't stay within the parameters of the online site. However I disagree. Mr G was initially duped by a fake website which imitated the online rental site. Mr G then contacted the 'host' (scammer) as there was the facility to and discussed the price, with the scammer seeming genuine and providing information and also advising why they preferred this rental site as opposed to a well-known other site. Mr G was then sent confirmation of the reservation which mimicked that of the genuine site and also received a sophisticated invoice which included instructions on making the payment. I don't think there were any red flags that would have made Mr G think that things weren't as they seemed or made him think that he wasn't liaising with / through the genuine rental accommodation site.

All things considered, and as I pointed out in my provisional decision, Mr G wasn't aware of the type of scam he was falling victim to nor how they work. I can see why, at the time, he thought things seemed ok. I remain of the opinion that Mr G was simply the victim of a cruel and sophisticated scam and didn't foresee the risk of this sort of harm and was not partly to blame for what happened. So I don't consider it fair to reduce the compensation payable to Mr G.

Putting things right

For the reasons given above, I uphold Mr G's complaint against Santander.

I direct Santander to:

- Refund the monies lost to the scam, that being £3,225.88.
- Pay additional interest on that amount at 8% simple per year. This should be calculated from the date of the loss until the date of settlement.

**If Santander deducts tax from this part of the award it should provide a tax deduction certificate to Mr G so he can reclaim the amount from HMRC if eligible to do so.*

My final decision

For the reasons given above, my final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 29 March 2024.

Matthew Horner
Ombudsman