

## The complaint

Mr C complains that Santander UK Plc are holding him liable for a credit card account he says he didn't open himself.

## What happened

Mr C says he fell victim to a romance scam after he met someone I'll refer to as 'the scammer' on social media. Mr C understood the scammer lived abroad and he says in July 2022 she applied for a credit card account with Santander in his name without his permission or knowledge.

Mr C was told by the scammer that the Santander credit card was loaded with the proceeds of her inheritance and she required Mr C to transfer the money to her. Mr C followed through with the scammer's instructions and subsequently realised he'd fallen victim to a scam. Mr C reported the matter to Santander.

Santander issued its final response in September 2023 explaining that it wouldn't be accepting Mr C's claim that he was the victim of impersonation fraud. It said he received the credit card and used it for purchases, he also confirmed in branch that it was a genuine application.

Unhappy with Santander's final response, Mr C referred his complaint to this service. One of our Investigators looked into things and didn't think Santander were acting unreasonably by holding Mr C responsible for the credit card debt. Mr C didn't agree and asked for an Ombudsman to review his complaint.

The complaint has therefore been passed to me for determination.

On 16 May 2024, I issued a provisional decision upholding this complaint in part. For completeness, I repeat my provisional findings below:

*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've reached different conclusions to that of our investigator and I'll explain why.*

*In relation to Mr C's claim of impersonation fraud, I don't think Santander were wrong in opening the credit card account. Many of the details provided matched what Mr C has told our service about him. However, the credit card account wasn't immediately opened and Mr C was invited to attend a branch with identification to verify the application was genuine. It's unclear why the application was flagged for further checks but it's clear Santander had some concerns.*

*I've noted that Mr C attended a branch with his driver's license on 6 August 2022 and he did what was required of him to open the account. Mr C subsequently received the credit card and security details to allow him to make payments and I've noted the first payment posted*

*on the credit card account was at a supermarket for £35.64 on 16 August 2022. Mr C accepts this was him – albeit he says the scammer told him to make this payment as a ‘tester’.*

*Mr C also accepts sending payments via PayPal to the scammer which were funded using the available credit on the card from 16 August 2022 to 22 September 2022.*

*I believe Mr C’s testimony that the scammer applied for the credit card herself, not least because some of the information on the application such as Mr C’s work history and email address were false. Santander hasn’t been able to evidence that Mr C was sent a welcome pack (to his home address) explaining how the credit card would operate, which makes me inclined to believe Mr C’s testimony that he understood the scammer had loaded the money onto the credit card to be returned to her. As Mr C has not had a credit card before, I don’t think his belief of what the scammer told him was unreasonable.*

*However, I think the application was made with Mr C’s consent. I say this because Mr C was aware that a card in his name would be coming to his home address. Mr C also took steps to verify his identity with Santander in a branch so that the account could be opened. Mr C accepts he made all the transactions himself (albeit most were under the instructions of the scammer), so I’m not persuaded that Santander’s decision to hold him liable for the account was unfair or unreasonable.*

*But even though I’m satisfied Santander can hold Mr C liable for the account, I’ve gone on to consider whether it would be fair and reasonable for it to hold him liable for the full debt. In doing so, I’ve considered whether I think Santander reasonably should have prevented the loss to the scammer from happening. To be specific, the payments Mr C made to the scammer via PayPal.*

*Banks and other Payment Services Providers (“PSPs”) have expectations to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give financial advice.*

*Neither party disputes that Mr C was the victim of a romance scam and I’m also persuaded that Mr C was the victim of a scam based on his testimony and the available evidence. The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017 and the Consumer Credit Act 1974) and the terms of Mr C’s account is that he is responsible for the payments he authorised himself.*

*However, taking into account the law, regulatory 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 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; and*
- 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.*

- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape.

*I've noted that on 15 August 2022, when Mr C tried to send money to the scammer, Santander declined the payments. Mr C called Santander and explained that he was trying to send £500 to his girlfriend in San Francisco but it got declined. Mr C said the text message he received from Santander advised it would call him but he'd been waiting and no call was received. He was passed to another adviser in the card security team.*

*Mr C enquired why the payments were declined, he queried whether sending £500 was too much. Santander told him that its specialist team would need to review the matter and call Mr C back. Mr C said; 'I'm probably going to be doing this everyday, sending on PayPal to my girlfriend in San Francisco, so I hope I won't have to go through this all the time, will I?'. Santander's adviser said once he's had the conversation with the specialist team, they should get it all cleared up.*

*Santander hasn't provided any evidence that it spoke with Mr C again but his card was unblocked and he was able to make payments the following day.*

*In my judgement, based on the information Mr C had disclosed to two Santander advisers, I think it ought to have reasonably had cause for concern. I say this because the credit card application details say that Mr C applied for an 'Everyday Long Term Balance Transfer Credit Card'. So I think Santander ought to have reasonably believed that he would be transferring a balance onto his credit card, not making daily payments to his girlfriend overseas.*

*Had Santander's specialist department called Mr C (as agreed) and had a conversation with him, I think he'd have likely explained what it was he was doing. I think Mr C would have explained that the scammer had arranged for the card to be sent to him in order to return an inheritance payment to her. I think Santander would have quickly realised that this sounded like a scam and it could have explained the credit limit on the card had not been paid by another party, it was offered by Santander and would need to be repaid. I think Mr C would have identified that he'd fallen victim to a romance scam and he wouldn't have sent any payments to the scammer.*

*In other words, I am satisfied an intervention from Santander would have likely prevented Mr C's loss to the scammer.*

*I don't find that Santander should be responsible for spending beyond the payments sent to the scammer as I've described above.*

*I've thought about whether Mr C should bear any responsibility for his loss. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint.*

*I think this was a sophisticated scam. Mr C believed he was in a relationship with the scammer and was tricked into sending money to her. He didn't appreciate the nature of how the credit card operated as he hadn't had one before and believed he was sending money that belong to the scammer back to her. Because of this, I don't think it would be fair for him to share blame for this loss.*

## **Responses to my provisional decision**

Mr C replied to my provisional decision accepting it.

Santander replied to my provisional decision explaining it didn't agree. It said:

*'The payments were relatively small and within normal spend on the account so I am challenging that we should have intervened on the payments.'*

*The customer received terms and conditions and key facts conditions for the credit card.*

*If the customer was unsure, they could have asked us any questions on how this works.*

*I feel the customer should take some onus as they could have done more.'*

### **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 uphold this complaint in part, for the reasons I explained in my provisional decision (which forms part of this final decision).

I've noted Santander's comments in relation to the transactions being of relatively low value and therefore it doesn't believe it should have intervened. I didn't conclude that Santander ought to have flagged the disputed payments as unusual, Santander's fraud systems declined the initial payments Mr C attempted to send to the scammer. It required to speak with him and it did on two occasions. In my judgement, Mr C disclosed concerning information during the phone calls that was inconsistent with the purpose of opening the credit card account. Santander couldn't unblock the account after Mr C's calls as it explained its specialist team would need to review the matter and call Mr C. Santander provided no evidence of any further telephone calls it had with Mr C but I've noted the credit card account was unblocked.

Santander has not provided any explanation as to why it blocked the transactions and why the credit card account couldn't be unblocked following Mr C's calls to it. It also hasn't explained why the matter was required to be passed to its specialist team. I therefore think it's most likely that Santander considered the payments to be unusual and required its specialist team to speak with Mr C about them. Given the information Mr C disclosed to the two Santander advisers he spoke with, I think he'd have likely explained what he was doing to Santander's specialist team (that he was sending money to his girlfriend overseas). I think he would have likely followed with an explanation that he understood the money on the account was an inheritance that his girlfriend had credited the Santander account with. I think Santander – as the financial professional – ought to have reasonably identified that Mr C had likely fallen victim to a scam. That's because Santander provided Mr C with the credit limit, rather than the account being funded by another party. Had Santander explained this to Mr C, I think he'd have identified that he'd fallen victim to a scam and I don't think he'd have sent the scammer any money.

I've noted Santander's comments about Mr C receiving terms and conditions and a key facts document. However, I asked Santander to provide a copy of what Mr C would have received as part of the account opening process along with evidence this was sent. Santander was unable to provide this information. Because of this, I don't have any evidence that would suggest at the time the account was opened, Mr C was provided with sufficient information explaining how the credit card account worked. So, I don't agree that Mr C received sufficient information explaining how the credit card account operated prior to sending the disputed payments.

In my provisional decision, I explained Mr C hasn't held a credit card account before and believed the scammer's explanation of paying her inheritance money into the account. Based on Mr C's inexperience, I don't think he acted unreasonably by believing what the scammer had told him. And ultimately, I don't think he should share blame for falling victim to a sophisticated scam. Santander missed reasonable opportunities to uncover the scam and I'm persuaded it could have prevented the loss from occurring. This is why I remain satisfied that Santander should refund the disputed payments.

I do however maintain for the reasons already explained that Santander can hold Mr C responsible for the credit card account, along with the payments that weren't sent to the scammer.

### **My final decision**

My final decision is, Santander UK Plc should:

- Refund all the disputed transactions sent to the scammer. To be clear, these are all the payments sent via PayPal from 16 August 2022 to 22 September 2022, less any credits received back from PayPal.
- Refund any interest and charges applied to the credit card account as a result of the disputed transactions sent via PayPal.
- Pay 8% simple interest per year on any repayments made by Mr C towards the disputed PayPal transactions from the date they were paid to the date of settlement (less any lawfully deductible tax).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 July 2024.

Dolores Njemanze  
**Ombudsman**