

The complaint

Dr H and Mr W hold a joint account with Santander UK Plc (“Santander”).

Dr H’s complaint is about Santander’s refusal to reimburse her money she says she lost due to a scam.

Dr H is represented by Refundee in this matter. However, where appropriate, I will refer to Dr H solely in this decision for ease of reading.

What happened

The circumstances of this complaint are well known to all parties concerned, so I will not repeat them again here in detail. However, I will provide an overview of events.

In short, Dr H says she has fallen victim to an investment scam. She says she was deceived by fraudsters, purporting to be from the firm Holzmann Friedrich, into making payments towards what she thought was a legitimate investment. The payments in question were all fund transfers from Dr H’s Santander joint account to O E Investment Ltd:

Payment Number	Date	Amount
1	12 March 2018	£3,000
2	15 March 2018	£5,000
3	16 March 2018	£7,000
4	22 March 2018	£4,000
5	22 March 2018	£4,000

Dr H raised the above with Santander in March 2018. Consequently, Santander was able to recover almost £11,000 from the fraudsters’ bank. In 2023, Dr H raised a formal complaint about this matter with Santander, which she also referred to our service.

One of our investigators considered the complaint and did not uphold it. Because Dr H did not accept the investigator’s findings, this matter has been passed to me to make a decision.

What I have 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 find that the investigator at first instance was right to reach the conclusion he did. This is for reasons I set out in this decision.

I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

Should Santander have recognised that Dr H was at risk of financial harm from fraud?

It is not in dispute that Dr H authorised the payment transactions in this matter. Generally, consumers are liable for payment transactions they have authorised. However, that is not the end of the story. This is because even if a payment is authorised, there are regulatory requirements and good industry practice which suggest firms – such as Santander – should be on the look-out for unusual and out of character transactions to protect their customers from financial harm. And, if such payment transactions do arise, firms should intervene before processing them. That said, firms need to strike a balance between intervening in a customer's payment to protect them from financial harm, against the risk of unnecessarily inconveniencing or delaying a customer's legitimate transactions.

I have borne the above in mind when considering the payment transactions in this matter.

Payment 3

I am persuaded that an argument could be made to say that Payment 3 (set out above) was unusual and out of character. I say this because of the value of the transaction and the fact that within the space of four days – the running total of the payments concerned would have amounted to £15,000 when Payment 3 was attempted.

Given the above aggravating factors, I think there was an identifiable risk. Therefore, Payment 3 should have triggered Santander's fraud detection systems; prompting it to intervene before releasing the transaction to try to protect Dr H from financial harm. My view is that a proportionate intervention to the risk identified would have been for Santander to provide Dr H with a written warning that broadly covered scam risks.

Santander failed to do this.

I have thought about whether a 'human intervention' from Santander should have occurred rather than the written warning I have described above. Having done so, I am not persuaded that a human intervention was justified. I say this because of Dr H's account activity. I can see from Dr H's account statements – going back 12 months prior to the payments concerned – it was not unusual for relatively large sums of money to be credited to and debited from her account. Further, when Payment 3 was made, it did not drain the account balance. I find that these factors would have decreased the need for a human intervention to a written intervention being more proportionate.

If Santander had intervened, would that have made a difference?

As I have taken the view that Payment 3 should have triggered an intervention by Santander, I must now turn to causation. Put simply, I need to consider whether Santander's failure to intervene caused Dr H's losses. To do this, I need to reflect on whether such an intervention (described above) would have likely made any difference. Having done so, I am not persuaded that it would have. I take the view that, on the balance of probabilities, Dr H would have frustrated Santander's attempt to intervene to protect her from financial harm – thereby alleviating any concerns Santander had.

I have reached this view for the following reasons.

I have not seen any material which helps illuminate, for example, Dr H's state of mind around the time of Payment 3. It follows that had Santander provided a warning regarding Payment 3, it is difficult to speculate what would have happened. Therefore, in the absence of such material, I have taken into account what Dr H thought about the scam at the time. I have relied on this as an indication as to what Dr H would have likely done had Santander intervened in Payment 3.

The fraudsters purported to be from Holzmann Friedrich. This company appears to be legitimate and, according to the FCA, had passported rights into the United Kingdom up until 31 December 2020. However, I can see from an FCA warning – published on 31 May 2018 – suggesting that fraudsters were using Holzmann Friedrich's details to try to convince people that they worked for the genuine firm. This is sometimes referred to as a 'clone firm'. From the emails I have seen between Dr H and the fraudsters, it appears the fraudsters relied on the genuine details of Holzmann Friedrich to deceive Dr H into thinking she was investing with the genuine firm. In doing so, the fraudsters put Dr H under their spell – resulting in her making the payments she did. It follows that had Dr H been provided with a written warning regarding Payment 3, I take the view that on balance, this would not have broken the fraudsters' spell. As far as Dr H was concerned, she was dealing with the genuine Holzmann Friedrich firm at the time, and had no reason to suspect otherwise.

Therefore, in my judgment, had Santander intervened in Payment 3 to try to protect Dr H from financial harm (in the way described above): it is likely Dr H would have frustrated this intervention – thus alleviating any concerns Santander had.

Other payment transactions

Other than Payment 3, I have thought about whether Dr H's other payments should have triggered Santander's fraud detection systems prompting it to intervene. Having done so, I am not persuaded they should have. I say this because of the absence of any significant aggravating factors surrounding those payments. Further, by the time of Payments 4 and 5, three unchallenged large payments had been made to the same beneficiary – thus assuaging any concerns Santander may have had that Dr H was at risk of financial harm.

Even if it could be argued that the payments mentioned should have triggered interventions, I am not persuaded that such interventions would have been successful for the same reasons I have set out above regarding Payment 3.

Recovery of funds

Dr H made her last payment in connection with the scam on 22 March 2018. She reported the scam to Santander on 27 March 2018 at 15:00. Santander contacted the fraudsters' bank on the same day at 16:49. Consequently, £10,978.31 was secured, which the fraudsters' bank returned.

In my view, Santander acted promptly in its attempt to recover Dr H's funds.

Vulnerabilities

Dr H says, amongst other things, that she was vulnerable at the time of the scam. That is, she was experiencing depression and anxiety. This was, she says, exacerbated by: being compelled to resign from work, an employment tribunal claim and the fact she was not able to secure a comparable job.

From what I have seen, I am not persuaded that Santander knew or ought to have known about Dr H's personal issues at the time. Therefore, I cannot say Santander should have dealt with Dr H's payments any differently in this respect.

Compensation for distress and/or inconvenience

I have considered whether an award for distress and/or inconvenience is warranted in this matter. Having done so, I am not persuaded that it is. I have not found any errors in Santander's investigation. Any distress and/or inconvenience Dr H has suffered is a result of the fraudsters' actions – not Santander's.

Conclusion

Taking all the above points together, I do not find that Santander has done anything wrong in the circumstances of this complaint. Therefore, I will not be directing Santander to do anything further.

My final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X and Mr W to accept or reject my decision before 3 April 2025.

Tony Massiah
Ombudsman