

The complaint

Mr S is unhappy with the way Santander UK Plc dealt with him after he reported unauthorised access to his account following his phone being stolen.

What happened

In May 2023, Mr S had his phone snatched while he was on a night out. His phone was unlocked at the time and he had some security information on it. This meant the thieves/fraudsters were able to access a number of his accounts, both related to his banking and other services such as cryptocurrency.

The fraudsters successfully applied for an overdraft on his Santander account and used this money to buy cryptocurrency, which was received in Mr S's cryptocurrency account. They also moved money around his accounts and paid funds into Santander from his account with 'M', which cleared the overdraft. They then attempted to buy cryptocurrency with these funds, but this transaction was unsuccessful. Mr S gained access to his banking through another phone and contacted Santander to report the fraudulent activity.

Santander advised Mr S to contact the other firms the money was paid to, as the funds that left Santander went to his own accounts. It removed the overdraft, but didn't recredit his account the amount of this overdraft, as it had already been repaid at this time. Mr S complained to Santander about how it was dealing with his account, the fraudulent overdraft application and the fact it hadn't credited his account with the amount of the overdraft, as his own funds had repaid this. It didn't uphold his complaint, so he came to our service.

By the time our investigator looked into this complaint, M had refunded Mr S the whole amount he sent to Santander. She awarded him £150 for how Santander had dealt with his claim, but didn't agree it needed to reimburse him anything else. Santander agreed to pay this. Mr S accepted that he now wasn't out of pocket, but didn't agree with the compensation award, so he asked for an ombudsman to review his case.

I issued a provisional decision on this case in early August 2024. My findings were as follows:

Under the Payment Services Regulations 2017, the starting position is that Santander would be held responsible for payments Mr S didn't authorise, but Mr S would be responsible for payments that he did. I've looked at how Santander responded when Mr S reported the unauthorised transactions and overdraft. I'm in agreement with our investigator that it should've done more at the time.

From the information available, Santander did accept Mr S had been the victim of fraud, but as the money moved to accounts in his own name, it considered the funds were not lost from it and he needed to discuss the missing money with the receiving firms, including the cryptocurrency provider.

While the rules do set out that Santander should be refunding unauthorised transactions by the end of the next business day, within the rules it also sets out

Santander doesn't have to do this if an investigation is warranted. And here, considering the money moved to Mr S's own accounts, I don't think Santander was unreasonable in not immediately refunding – it needed to be satisfied there was an actual loss. However, as our investigator set out, this investigation then needed to happen. It doesn't appear Santander took all the necessary steps.

When something has gone wrong, we consider what should've happened and what this ought to have looked like.

Santander did remove the unauthorised overdraft facility the same day Mr S reported it. So this is in line with what's expected of it. But what should've also happened that didn't, is that Santander should've asked Mr S for evidence of the losses, and contacted the other parties involved and established what had happened on their accounts and what liability, if any, it had. So I agree Mr S is due some compensation from Santander, as it failed to investigate his claim correctly and didn't carry out its share of the investigation.

The level of compensation does however need to be proportionate to the impact the mistake had, taking into account what's reasonable and foreseeable in the circumstances.

Although Santander didn't investigate as it should have, M contacted it and asked for the funds that were fraudulently transferred back. Santander transferred £5,500 to M on 7 June 2024.

Considering the investigation that should have happened, I don't think it's unreasonable that it took around two weeks to return the funds. So I wouldn't be awarding Mr S compensation for any delays here, as while Santander didn't do as it should have, as he's aware from M who was actively investigating, this kind of investigation can take a short time.

Mr S is also unhappy that Santander only returned £5,500 when it should've returned £7,000. I agree it didn't return the correct amount to M. But M credited Mr S's account by £7,000 on 15 June 2023. So Mr S has not personally been financially affected by this error. I accept that M didn't have to cover the shortfall in what was returned, but it did. It's not my role to consider the distress that could've been caused by hypothetical situations, only the impact of what did happen. And as Mr S was fully refunded and M is the one that's technically out of pocket, I am not awarding him compensation for this.

Mr S has also mentioned other losses in addition to distress caused. I've reviewed the statements Santander has provided us. The fraudulent activity occurs on 21 May 2023, but due to the M credit in then the fraudulent payment out to Coinbase failing, the account remained in credit by £5,500. The statements then show a number of scheduled direct debits leaving the account between 30 May to 1 June 2023.

Mr S has said that he's suffered a financial loss due to what happened as his car insurance payment wasn't made. But the statements I hold show all his direct debits from his Santander account were paid and this includes one which appears to be his car insurance. As the fraudster was unable to empty Mr S's account, the funds from M meant all these scheduled payments were honoured. So I can't see a loss here. He's also discussed his credit file, but I haven't seen evidence of any adverse information or negative impact on his credit file or score by Santander's actions.

Mr S is asking for £2,500 in compensation from Santander for the distress and

inconvenience caused to him by how it handled this situation. But I see no grounds to award such a figure. It cancelled the overdraft the same day Mr S spoke to it. And just over two weeks after he reported the fraud, his Santander account was returned to the position it would've been in without the fraud occurring. I accept it should've taken more responsibility for the investigation and have done more to resolve the situation, but I don't agree the compensation Mr S is asking for is proportionate to the mistake made. Or the impact he's described is reasonably foreseeable to Santander, so that it should be held responsible for all of the distress and difficult personal circumstances he's described.

I acknowledge that as a result of the theft and unauthorised account access, Mr S's mental health has suffered and he's experienced a great deal of stress. And that this has led to him being off work and experiencing financial losses associated with this. But I don't agree that Santander can be considered solely responsible for all this, so that it ought to pay Mr S a greater amount of compensation than the £150 it's now agreed to pay.

I accept Santander should've dealt with Mr S's fraud claim better, but I consider £150 is fair compensation considering the foreseeable impact this had on him and what actually went wrong.

Santander accepted the provisional decision. Mr S didn't agree with it. He didn't provide any material new evidence, but maintained that the compensation award was too low. As both parties have responded before the deadline, I am now issuing my 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.

I recognise Mr S is very unhappy with the award proposed and doesn't agree it's enough to compensate him for the trouble the above situation has caused him. But as I set out in my provisional decision, I consider the trouble and stress caused stems from more than just Santander's actions and can be attributed to the situation as a whole, not just Santander's part in it.

Mr S hasn't provided any new evidence to show that it was purely Santander's actions that caused him the distress described. Or to show that this was reasonably foreseeable to Santander when it made the error in failing to conduct its own investigation into the unauthorised transactions. Due to this I see no reason to change my provisional findings or increase the compensation award I provisionally set out. So my decision remains unchanged from my provisional findings, included above.

Putting things right

I direct Santander UK Plc to pay Mr S £150 compensation.

My final decision

For the reasons set out above, I uphold Mr S's complaint and direct Santander UK Plc to pay him £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 September 2024.

Amy Osborne
Ombudsman