

The complaint

Mr and Mrs D complain that Santander UK Plc won't refund them the money they lost after they fell victim to an Authorised Push Payment (APP) scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, I understand it to be as follows.

Mrs D received a call from somebody claiming to be from the police. She was told they were the fraud department and Mrs D's assistance was needed to help with an investigation into organised crime. The caller told Mrs D that her money was at risk and, in order to protect the contents of the joint account she and Mr D held with Santander, she needed to follow their instructions. But unknown to her at the time, Mrs D was talking to fraudsters.

The fraudsters told Mrs D that due to the undercover nature of the operation, under no circumstances should she discuss the matter with family or friends. And if she did, it could lead to her being arrested. Believing everything to be genuine, Mrs D followed the fraudsters' instructions to purchase two luxury watches from a local jeweller, which she should pay for through the joint account held with Santander.

As instructed, on 16 April 2024, Mrs D visited a local jeweller and saw two watches the fraudsters had told her to buy. She obtained a compliment slip from the jeweller, upon which the jeweller had written bank account details, to which payment for the watches should be made. She subsequently attended a branch of Santander, still in the same area and asked to make a transfer in order to pay for the watches. The fraudsters told Mrs D that she should tell Santander that the watches were a gift for her son and grandson and that she wanted to see them enjoy them in her lifetime. Mrs D added that while in the branch, the call with the fraudster was still open on her mobile.

Mrs D went ahead and made a payment for £43,200, to the account details that the jeweller had provided, following which she went to collect the watches. The fraudsters initially told Mrs D that she should drop the watches off at a police station, but she was then informed that a courier would come and collect them from her home.

After making this transaction, Mrs D was also told she should attend the branches of other banks, where she and/or Mr D held accounts. Mrs D made a cash withdrawal (via ATM) at one of these banks for £2,000 (which ultimately, she retained and didn't hand over to the fraudsters).

Mrs D also attempted to make a cash withdrawal at a different bank. She was told by the fraudsters to withdraw £6,500 and to tell the bank that the payment was for a car. But the bank here took Mrs D to one side and after a discussion it declined to make the payment and put blocks on the account.

Mrs D became suspicious after a courier had collected the watches and she reported the matter to the police.

Mr and Mrs D raised their concerns with Santander, but it didn't agree to uphold their complaint. In summary, it didn't think it was liable for the money Mr and Mrs D had lost as it considered the correct level of security was undertaken.

Unhappy with Santander's response, Mr and Mrs D brought their complaint to this service. One of our Investigators looked into things but didn't think the complaint should be upheld. In summary, our Investigator acknowledged that this was an unusual payment, but she didn't think the scam risk would have been apparent to Santander, and she didn't think this was a situation where Santander ought to have invoked the Banking Protocol.

Mr and Mrs D, through their representatives, didn't agree with our Investigators view. I've summarised the main points that were raised in objection to our Investigator's view below;

- Mrs D visited the jewellery store at the instruction of the scammer and was under the influence of the scammer's instruction throughout. She was in live contact with the scammer, via an open line on her mobile, while in the Santander branch.
- Mrs D had expressed doubts about the legitimacy of the caller's identity. She was advised to call 999 to verify the legitimacy, which she did – but was unaware that the call had not been disconnected. Mrs D truly believed she was following a lawful instruction from the Police.
- Mrs D was in a vulnerable stage at the time of the transaction.
- The value of the payment, Mrs D's age, the prevalence of scams of this type and the visible presence of Mrs D's mobile phone on the branch counter should have raised red flags with the branch – which warranted further questioning by Santander.
- The concerning factors should have prompted Santander to initiate the Banking Protocol. Had it done so the loss would have been prevented.

As an agreement couldn't be reached, the complaint has been passed to me for a 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'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

It isn't in dispute that Mr and Mrs D have been the victims of a cruel scam, and I don't doubt that these events have had a significant impact on them. But I'm afraid this decision doesn't bring Mr and Mrs D the news they had hoped for. I say that, as having thought very carefully about Santander's actions, I think it did act fairly and reasonably in allowing the payment to be made. I also don't think it would have been able to recover any of the money Mr and Mrs D sadly lost. I'll explain why.

Santander's first obligation is to follow Mr and Mrs D's payment instructions. So, in the first instance Mr and Mrs D are presumed liable for their loss. But there are other factors that must be considered. To reach my decision I have taken into account the law, regulator's

rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time.

This means I think that Santander should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual 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 financial institutions 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.

I need to decide whether Santander acted fairly and reasonably in its dealings with Mrs D when she made the payment in branch, and whether it should have done more than it did.

I don't think it's in dispute that the payment Mrs D was making, for £43,200, was out of character and not typical of the usual activity on the account. So, I would reasonably have expected Santander to take steps to satisfy itself that Mrs D wasn't at risk of financial harm, before allowing the payment to be progressed.

From the evidence I've seen, Santander did take some steps to try and protect Mrs D. Questioning her about the transaction was the right thing to do, considering the unusual nature of the payment she was requesting to make. It's also important to bear in mind Mrs D's age. She was in her eighties at the time of the scam and so, she was what the Financial Conduct Authority describes as an 'older old' consumer. The purpose of highlighting such characteristics of a consumer is to help identify those at heightened risk of financial harm due to fraud and scams.

Many people of Mrs D's age and above may well not be obviously vulnerable, indeed I haven't seen any evidence to suggest that Santander had been advised before the scam of Mrs D being vulnerable to the point where it needed to make any adjustments in terms of how she operated her account. But it is a fact that fraudsters target older people, and so they are generally at greater risk. This is a fact Santander ought to be aware of. What this means in practice is that the bank ought to have been particularly careful to ask probing questions about the purpose of the transfer. Those questions need to go beyond asking only what the payment is for; the bank ought to flesh out the details and wider circumstances behind the payment. The purpose being to break through any spell cast by clever and sophisticated fraudsters. Victims are often coached into giving cover stories for payments. And so, the bank should use its expertise to question customers to see that the given purpose of a payment holds up to a reasonable level of scrutiny.

So, I've considered whether Santander's intervention here went far enough. I think the purpose Mrs D gave for the payments was plausible; it's certainly feasible that parents / grandparents may want to gift something to their children/grandchildren. But it's worth noting that, a plausible reason for a payment, isn't in and of itself enough to say that a bank ought to be reasonably satisfied that its customer isn't at risk of financial harm. I would expect a business to have sought further detail and be on the lookout for other concerning factors.

But from what I've seen, and it doesn't appear to be in dispute, Mrs D was able to present to Santander a compliment slip from the genuine jeweller, which contained the bank account details for that jeweller. It's reasonable that this would have reassured Santander that Mrs D had obtained the bank details in person (meaning there was nothing suggestive of a scam whereby bank details are changed, such as an email intercept scam).

Importantly here, the bank details also registered an 'exact match' under a Confirmation of Payee check, so Santander would have been able to see that Mrs D was making a payment to an account held in the jewellery stores name, a name that matched the compliment slip that Mrs D had presented. As well as this, Mrs D would have been able to genuinely explain to Santander that she had seen the goods in person – unlike typical purchase scams, where victims often hadn't seen the goods they are led to believe they are buying. Furthermore, the jewellery store was a local business in the same area as the Santander branch Mrs D attended. I think this likely would have added more plausibility to Mrs D's cover story that she was genuinely purchasing items from a local business, had seen the items in person, and had received the payment details in person.

Based on this, I think it was fair and reasonable for Santander to have concluded that Mrs D was indeed purchasing watches, which she was. And I'm not persuaded the set of circumstances Santander was faced with here could reasonably have led it to suspect there was an identifiable risk that Mrs D was potentially falling victim to an impersonation scam. Where more typically, a victim will be tricked into withdrawing and handing over cash or transferring money to accounts controlled by fraudsters. That's not to say fraudsters may not deploy other tactics, indeed they have done so here in asking Mrs D to purchase watches – but rather, I'm not persuaded, in the individual circumstances of this case and given the plausibility of the story Mrs D gave, that it would have been so obvious to Santander that I could fairly and reasonably reach a finding that it ought to have recognised this.

I'm also mindful that the evidence Santander has provided does indicate that it held a 'scam chat' with Mrs D, which included reference to fraudsters asking victims to move money to keep it safe, or as part of an investigation and that fraudsters will ask customers to mislead banks to avoid detection. Mrs D has explained that she was completely under the influence of the fraudsters, so I can understand why she didn't respond positively to the statements she was read, or flag to Santander what was actually happening. But in not doing so, it did diminish Santander's opportunity of identifying the risk of an impersonation scam. I say that especially as I think it would have been apparent to Santander that the most likely risk to Mrs D was that of a purchase scam – but for reasons explained above, I think Mrs D's explanation of what the payment was for and the evidence that presented itself in support of that, reasonably satisfied Santander that she wasn't at risk of that particular type of scam.

Had other things presented themselves, such as a Confirmation of Payee 'no match', or that Mrs D was paying money to an individual person's account (rather than that of a genuine jewellers), or if Mrs D was requesting to make a substantial cash withdrawal, these may have been factors that could, and probably ought, to have given Santander further cause for concern. But these factors weren't present here and overall, for reasons explained, I think the circumstances that were presented to Santander were such that it wasn't unreasonable for it to not identify a further risk.

I've thought carefully about what Mrs D has said about the call with the fraudster being 'open' and her having her mobile phone present in the branch. Santander on the other hand, in its submissions, has said that its branch staff didn't note that Mrs D's phone was on the counter. I don't doubt that the call Mrs D was having with the fraudster was still 'open' at the time she was in the branch. But importantly, the evidence doesn't suggest that Mrs D was actually talking with the fraudsters while carrying out the transaction. So, while I agree Santander, should be on the lookout for its customers using their phones while making

transactions, it doesn't seem to me that this risk would have been so obvious in the circumstances of this case.

I note that Mr and Mrs D's representatives have explained that further action was warranted such as invoking the Banking Protocol. While I've considered the representative's points on this, invoking the Banking Protocol isn't a banking requirement. But rather, it is a tool that *can* be used by banks – where appropriate – to help identify and prevent customers from falling victim to a scam. In the circumstances of this complaint, I think it was reasonable for Santander not to invoke banking protocol. I say that as I'm satisfied based on what Santander knew, it had a reasonable basis for believing that Mrs D was making a legitimate payment and wasn't at risk.

I'm aware that Mrs D went on to attempt to make a further transaction, with a different bank, that was refused by the bank and led to blocks being put on the account. I won't dwell on that, as the payment was attempted with a different bank, no money was lost and that transaction doesn't form part of this complaint – and it is important to, indeed I must, focus on the individual circumstances of the transaction Mrs D made from the Santander account. But it is worth noting, that while of course the transaction from the other bank was attempted as part of the same scam, the set of circumstances the other bank faced, were different to what was happening with the Santander transfer.

There, it was a large value cash withdrawal (in and itself a red flag, particularly so giving the security risk of an elderly customer leaving a branch with a substantial amount of cash) and it was under the pretence that it was to buy a car. It is understandable how that bank would have been able to identify a further risk. I say that as with proportionate questioning, I doubt whether Mrs D would have been able to provide plausible answers or provide any evidence of the car's existence or of any checks (such as a DVLA check) – which is all supported by that bank being able to stop the payment and place blocks on the account. Whereas with the Santander transaction, Mrs D was able to provide legitimate and genuine evidence from the jeweller about the watches that she intended to buy, she had seen them, and she was making a transfer to an account that Santander could see was genuinely linked to the jeweller. Given the locality of the jeweller to the branch, it isn't too much of a leap to reasonably expect that the Santander branch staff would have also known of the jeweller which may have reassured them further – although that has not been noted.

All things considered, I think it was reasonable, based on what it knew, for Santander to be satisfied that Mrs D was making a genuine purchase of watches, from a legitimate jeweller. And I don't think there is enough evidence to suggest that it could reasonably have foreseen that Mrs D was falling victim to an impersonation scam and that the watches would ultimately end up in the hands of the fraudsters.

Finally, I've considered whether Santander did all it could to recover the money once Mr and Mrs D had reported the scam to it. But here Mrs D has sent the money to a legitimate merchant and received the goods she paid for, which ultimately ended up in the hands of the fraudsters. What this means is that Santander wouldn't have had options open to it to try and recover the money that was sent.

I understand that my decision here will be disappointing for Mr and Mrs D and I don't underestimate their strength of feeling. But it wouldn't be fair and reasonable for this service to hold a firm liable when there has been no failing on its part.

I don't say any of this to downplay or diminish the fact that Mr and Mrs D have fallen victim to what was a cruel and cynical scam. I have a great deal of sympathy for them and the position they have found themselves in. However, my role is limited to looking at the actions

and inactions of the bank and I'm satisfied it isn't responsible for refunding the money Mr and Mrs D sadly lost.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 9 April 2025.

Stephen Wise
Ombudsman