

## The complaint

Miss P is unhappy that Santander UK Plc (“Santander”) won't refund her after she fell victim to a safe account scam.

## What happened

I'm not going to cover all the points raised in detail. The view of 25 October 2024 covered the details of Miss P's testimony. But briefly, in December 2023, Miss P's partner was contacted by someone purporting to be from his bank explaining that his account had been compromised. Miss P's partner initially moved his money to Miss P's account with Santander and then the scammers said that Miss P's account had also been compromised.

Miss P was told to open accounts with two electronic money institutions (EMIs - I will refer to as R and W in this decision). Miss P made multiple payments to both accounts before the scammer ended the call. Soon after she realised the money had been moved on from the other two accounts. The following transactions were made.

Transaction #	Amount	Payee
1	500	R
2	400	R
3	£20	W
4	£500	W
5	£500	W
6	£500	W
7	£500	W
8	£500	W
9	£400	W
10	£500	R
11	£500	R
12	150	R (card)
13	£400	R
14	£350	W
15	£480	W
16	£250	W
17	£350	W
18	£250	W
19	£180	W
20	£350	W
21	£300	W
22	£300	W
23	£250	W
24	£400	W

25	£250	W
26	£350	W
27	£300	W
28	£340	W
29	£340	W
30	£370	W
31	£450	W

Our investigator upheld the complaint in part. He felt a clear pattern of fraud emerged by the time Miss P made the eleventh payment. He considered Santander ought to have stepped in and asked about the payments and if it had, the scam would have unfolded, and any further losses would have been prevented.

Santander did not accept the investigator's conclusions. I also wrote to Santander explaining I was intending to uphold this complaint from an earlier point than the investigator's view. I also considered an award for distress and inconvenience was appropriate in this case. Santander did not accept my conclusions. It said:

- The other two institutions are both FCA regulated electronic money institutions (EMIs) and the customer was transferring funds to accounts held in her own name.
- It carried out the customer's payment instruction in accordance with The Payment Services Regulations 2017 (PSR). It was not aware that the individual payment instructions from the customer arose in the context of an attempt to misappropriate their funds.
- It is not privy to the specifics as to what happened once the funds were transferred to the customer's other accounts from her Santander account. However, it would appear that the customer did not authorise the transactions which subsequently occurred from these accounts to the perpetrators of the fraud.
- If it is correct that the customer was not involved in / did not authorise the onward transactions from the other accounts, the EMIs concerned are obliged to refund 100% of the customer's loss in accordance with Regulation 76 of the PSR.
- We also note that the PSRs allow this Service to refer the complaint – DISP 3.5.2 G 06/04/2008 RP - The Ombudsman may inform the complainant that it might be appropriate to complain against some other respondent.
- Both EMIs are authorised and regulated by the FCA for the activities which they perform. They are therefore classed as a "payment service provider" as defined within the PSR and are subject to identical regulatory obligations as Santander is when it comes to having systems in place to protect customers.
- It follows that the EMIs should also have in place robust anti-money laundering procedures to identify customer risk and prevent fraud in the same way as Santander. Indeed, it is its position that both EMIs were far more in control than Santander for preventing the fraud which was ultimately perpetrated. The fact that they did not do so, does not mean that Santander should be responsible for that failing.

I issued my provisional decision on 7 February 2025. Santander did not accept the decision and confirmed its position (as set out above) remained the same. Miss P accepted the provisional decision.

I explained in my provisional decision some of the information from Santander wasn't clear regarding the order of the transactions and that any changes may change the point at which I uphold the complaint from. The revised order is as set out above and form the basis of this decision.

During the correspondence following my provisional decision, I established the following:

- I found that Miss P's partner's (who fell victim to the same scam) refund is not connected with the transactions in this case. A sum of money from Miss P's partner was moved into Miss P's account and then returned to him via her savings account. So that money did not go on to fund Miss P's onward payments to the scam. Miss P shared the evidence of his transactions – which went direct from his own account to the scam and evidence that only these were refunded. So that sum should not be deducted from the compensation in this case.
- My provisional decision already set out the recovered sum (£22.06) from W should be deducted from any refund and my position on that remains the same.
- I had initially said recovered funds from R should not be deducted from the refund. That was based on the order of the transactions and as I wasn't asking Santander to refund any of the transactions to R that wouldn't be fair.
- However, the order of transactions was incorrect, and I am now asking Santander to refund some of the transaction to R. It can make a deduction, but that deduction can't be greater than the sum it is refunding on the R transactions.
- Based on the table above, I am asking it to refund £1,596 from R so it can deduct the full £1,350 recovered funds.
- I told Santander that I didn't think the wording in the warning was effective given the nature of safe account scams and level of coaching involved with this type of scam.

### **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 appreciate Santander has not changed its position, but it didn't provide any new evidence or arguments. So, (other than the points outlined above) I see no reason to depart from the conclusions set out in my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint from the sixth transaction (the fourth transaction to W). For completeness, I have set this out below with amendments to reflect the six points above.

In deciding what's fair and reasonable, I am 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.

Having done so, I'm upholding this complaint in part. Since my provisional decision, I have established that the list of transactions wasn't correct – so I have now established a different point from which I intend to uphold the complaint.

For the reasons I will go on to explain, I've concluded that Santander ought reasonably to have made further enquiries prior to processing the sixth payment (fourth payment to W) and if it had done so, the scam would have come to light and any further losses would have been

prevented. I also don't find that Miss P should share in the responsibility for her losses. Santander should also pay an award for the distress and inconvenience this matter has caused Miss P.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Miss P's account is that Miss P is responsible for payments Miss P has authorised herself. And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- The express terms of the current account contract may modify or alter that position. For example, in *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.

In this case, Santander's February 2023 terms and conditions gave it rights (but not obligations) to:

1. Refuse any payment instruction if it reasonably suspects it relates to fraud or any other criminal act.
2. Delay payments while fraud prevention checks take place and explained that it might need to contact the account holder if Santander suspects that a payment is fraudulent. It said contact could be by phone.

So, the starting position at law was that:

- Santander was under an implied duty at law to make payments promptly.
- It had a contractual right not to make payments where it suspected fraud.
- It had a contractual right to delay payments to make enquiries where it suspected fraud.
- It could therefore refuse payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things.

Whilst the current account terms did not oblige Santander to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Santander from making fraud checks before making a payment.

And, whilst Santander was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good practice at the time, it should fairly and reasonably have been on the look-out for the possibility of APP fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Santander, do.

The detailed reasoning for this has been set out in substantial detail in recent decisions to

Santander, so I don't intend to repeat it here. But in summary, overall, 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 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 banks are generally more familiar with than the average customer.
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – as in practice all banks do.
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

*Should Santander have fairly and reasonably made further enquiries before it processed Miss P's payments?*

It isn't in dispute that Miss P has fallen victim to a cruel scam here, nor that she authorised the disputed payments she made to her accounts with R and W (where her funds were subsequently transferred to the scammer). She authorised the payments – albeit she was tricked into doing so, but I've thought about whether the bank should have reasonably intervened in any of these payments.

Whilst the detail which led Miss P to make the payments from her Santander account and the process by which that money ultimately fell into the hands of the fraudster, is now well known to both parties, I am mindful that Santander had much less information available to it upon which to assess whether any of the payments presented an increased risk that Miss P might be the victim of a scam.

So, I have considered the steps Santander ought fairly and reasonably to have taken into account with only the more limited information it had.

Having considered the first five payments made as part of the scam, I don't think there was anything particularly unusual or suspicious that ought to have concerned Santander at that point.

Whilst the initial payments to both R and W were new payees, I think Santander could (at least initially) take some comfort from the fact the payments were going to an account in Miss P's own name. I appreciate that the payments were being made to an EMI (which are reporting increasing instances of customers being scammed, including as a consequence of

multi-stage scams). But the value of the initial payments would not, in my opinion, have appeared particularly out of character. They were not (individually) for significant amounts, and Miss P had sufficient funds in her account to make these payments.

But Santander should also have been aware of the increase in multi-stage fraud, particularly involving me to me transfers when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years. And, increasingly, we have seen the use of an EMI as an intermediate step between a high street bank account and other types of scams.

It's clear Santander recognised the risk of Miss P seemingly transferring money to her own account elsewhere, as it has provided a copy of a 'transfer to own account' warning with its file and say this was presented to her during the payment journey. And ultimately Santander was concerned enough to block the account.

However, I am satisfied Santander should have made further enquiries when Miss P came to make the fourth payment to W on 21 April 2023 before it was processed. I say this because, by that point, it was the fourth payment being made to the second 'new' payee in quick succession and in a series of six payments made in a very short space of time (less than ten minutes).

Santander will be aware that multiple payments being made in quick succession can often be indicative of financial harm. This is not the pattern I'd expect of someone making a genuine transfer to their own account elsewhere. And whilst there may have been legitimate reasons why Miss P was making a series of payments in a short period to an e-money account, I am satisfied Santander ought to have recognised the enhanced scam risk.

The amount being sent to W by this point was also out of character for the typical sort of spending associated with Miss P's account. Large payments were also being transferred into the account from Miss P's savings account. By the time she was making the sixth payment, she would have cumulatively paid over £2,420 in a very short space of time. However, Miss P's account statements show that she rarely makes payments for anything over and above £1,000, so this also ought to have been regarded as unusual.

So, I am satisfied Santander ought to have identified from all the information available to it that there might be increased risk associated with the sixth payment. In my view this combination of circumstances ought fairly and reasonably to have led Santander to make additional enquiries before processing the payment to establish the circumstances in what had become a series of payments that were out of character. The accounts with R and W were new payees. And this involved an unusual amount of money in quick succession.

In reaching my view that Santander ought fairly and reasonably to have made further enquiries, I consider Santander ought to have been mindful of the potential risk to Miss P of 'multi-stage' fraud – whereby victims are instructed to move funds through one or more legitimate accounts held in the customer's own name to a fraudster. The use of and risks to consumers of multi-stage fraud were well known to banks when Miss P made these payments.

I've noted Santander's warning. But I don't think it went far enough especially in the context of the circumstances of a safe account scam given the level of coaching that's often involved in this type of scam and the fact the consumer genuinely thinks they are speaking to the bank. Visually it's not an impactful warning. It's not particularly direct, personal or clear which is essential in a safe account scam. I think a warning covering the key features of a safe

account scam - such as scammers can make phone numbers look like the genuine bank's phone number – would have helped bring to life what scams like this look and feel like.

In the circumstances, a basic level of questioning designed to disturb or unearth a potential fraud and establish that Miss P was not at risk of financial harm would have been appropriate. For example: why are you sending this money to another account? how long have you had the account? why are you sending it in small regular payments rather than one lump sum? do you intend to transfer any more money? is anyone on the phone to you asking you to move money? And provided warnings including that a bank would never call you to say your account isn't safe and ask you to move money.

I've thought carefully about whether the kind of questions that I believe ought fairly and reasonably to have been asked by Santander would have made a difference. And on the balance of probabilities, I think they would have. If Santander had contacted Miss P and asked her further questions and for more information of the basic surrounding context of the payments she was making, I think it's likely she would have explained what she was doing. There's no indication that she had been coached by the scammer into misleading the bank, for example, so I think she would have likely explained that she was moving her money to a safe account. I think Miss P's response would have been concerning.

So, I think Santander missed an opportunity here to uncover the scam and prevent any further losses.

*Should Santander be fairly and reasonably held responsible for Miss P's loss?*

I note Santander's view that in a multistage fraud a complaint should be properly considered only against the firm that is the 'point of loss' ie the last point at which the money remains under the victim's control.

In reaching my decision about what is fair and reasonable, I have taken into account that Miss P paid the money to an account in her own name, rather than directly to the fraudster. It's not clear whether she remained fully in control of her money after she made the payments from her Santander account (it is possible the scammers also had access to the EMIs accounts), and it took further steps before the money was lost to the fraudsters.

But for the reasons I have set out above, I am satisfied that it would be fair to hold Santander responsible for Miss P's losses. As I have explained, the potential for multi-stage scams ought to have been well known to Santander and, as a matter of good practice, Santander should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams.

I think that Santander still should have recognised that Miss P might have been at risk of financial harm from fraud when by the time she made the sixth payment, and in those circumstances, it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses Miss P suffered. The fact that the money used to fund the scam wasn't lost at the point it was transferred to R and W does not alter that fact and I think Santander can fairly be held responsible for Miss P's loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against the firm that is the point of loss.

I've also considered that Miss P has only complained against Santander. I have also taken into account that the payments were made to a regulated business – R and W, and Miss P might potentially have a claim against R and W in respect of their actions.

I accept that it's *possible* that another firm might have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Miss P could instead, or in addition, have sought to complain against that firm. But Miss P has not chosen to do that and ultimately, I cannot compel her to.

Whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against two financial businesses about connected circumstances, Miss P has not referred a complaint about R or W to me and DISP does not empower me to instruct Miss P to make or refer a complaint to me about another business.

I am required to consider the complaint in front of me. I have found that Santander did not act fairly and reasonably in the circumstances of this case. And whilst it is a possibility that Miss P may have cause to complain against R and W, I am not persuaded it would be fair to reduce the award solely for that reason. Miss P is entitled to choose to complain only about Santander and I am satisfied that Santander could have prevented the losses she suffered if it had acted fairly and reasonably.

*Should Miss P bear any responsibility for her losses?*

I've thought about whether Miss P should bear any responsibility for her 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.

Having done so, I've reached the same conclusion as the investigator for broadly the same reasons.

Miss P's partner was called by a spoofed phone number which upon checking matched the bank's genuine number. I think this was enough to reassure Miss P her partner was speaking to the genuine bank.

I appreciate to the trained eye and with the benefit of hindsight, there may have been some 'red flags' but I have thought carefully about what is realistic to have expected Miss P to do bearing in mind the pressure she would have been under in the moment of the call like this. On balance, I believe that it was difficult for Miss P to think clearly in the moment and once in the call she had little opportunity to make further enquiries. In all the circumstances, I don't think her response was unreasonable.

*Distress and inconvenience*

Finally, I've considered whether Santander should pay Miss P compensation for distress and inconvenience she's experienced as a result of Santander's actions. In considering this, I've specifically thought about the impact of Santander's actions, rather than the impact of the crime itself. Santander's failure to sufficiently act has had an impact on Miss P, not least because she has been facing the very real possibility that she would not get her money back. But perhaps more significantly this was their life savings for an impending wedding (originally booked for September 2024) which had to be cancelled. Without funds Miss P was unable to pay the various suppliers. It was also savings towards their first baby born in May 2024.

Miss P remains without funds to go ahead with their wedding. As I've explained, Santander had an opportunity to prevent the scam and the loss and an opportunity to fairly compensate Miss P for her losses in December 2023 when it (in my view) unfairly declined her claim.



For these reasons, I'm satisfied that the impact of Santander's mistakes has caused considerable distress, upset and worry – and significant inconvenience and disruption to Miss P. An award of £500 is appropriate in the circumstances.

### *Recovery of funds*

As the funds went to an account in Miss P's name before being removed from there and sent to the fraudsters, funds could not have been recovered by Santander. Despite this, Santander did attempt to recover Miss P's funds from her own accounts and managed to recover £22.06 from W.

Miss P was also able to transfer £1,350 back from her account with R. I am now asking Santander to refund some of the transaction to R. It can make a deduction, but that deduction can't be greater than the sum it is refunding on the R transactions. Based on the table above, I am asking it to refund £1,596 from R so it can deduct the full £1,350 recovered funds.

Miss P's partner also transferred money as part of this scam and has been refunded by his bank. The investigator proposed this should be deducted from Miss P's refund. I found that Miss P's partner's (who fell victim to the same scam) refund is not connected with the transactions in this case. A sum of money from Miss P's partner was moved into Miss P's account and then returned to him via her savings account. So that money did not go on to fund Miss P's onward payments to the scam. Miss P shared the evidence of his transactions – which went direct from his own account to the scam and evidence that only these were refunded. So that sum should not be deducted from the compensation in this case.

### **Putting things right**

In order to put things right for Miss P, Santander UK Plc must:

Refund Miss P in full, from the sixth transaction onwards less the recovered money from R and W.

Because Miss P has been deprived of this money, I consider it fairest that Santander UK Plc add 8% simple interest to the above from the date of the transactions to the date of settlement. If Santander UK Plc is legally required to deduct tax from the interest it should send Miss P a tax deduction certificate so she can claim it back from HMRC if appropriate.

Pay £500 for the distress and inconvenience caused.

### **My final decision**

My final decision is that I uphold this complaint in part, and I require Santander UK Plc to put things right for Miss P as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 28 March 2025.

Kathryn Milne  
**Ombudsman**