

The complaint

Miss S complains that Santander UK Plc ('Santander') won't reimburse the funds she lost when she fell victim to a scam.

What happened

Miss S says that in October 2023, after responding to a phishing text, she received a call from someone who said they were from another bank Miss S holds an account with. The caller knew a lot of her personal details. Miss S was asked if she'd set up a standing order to a named individual. When she said she hadn't, she was told that her account had been compromised and her money wasn't safe. Miss S didn't know at the time, but the caller was a scammer.

The scammer told Miss S that many banks work with an electronic money institution (EMI) to help in these situations and advised her to open an account with the EMI. Miss S was then coached through moving her funds from another bank account to the EMI account. After expressing concerns about her Santander account, the scammer told her that this account was also compromised so she needed to transfer funds from it to the newly created EMI account. She was advised to do so by making a series of payments. I have set out in the table below the transactions Miss S made from her Santander account on the instructions of the scammer.

Transaction	Date	Time	Amount
1	25/10/23	1:01	£10
2	25/10/23	1:36	£700
3	25/10/23	1:37	£850
4	25/10/23	1:38	£900
5	25/10/23	1:39	£2,000
Total			£4,460

Shortly after the transfers were made the call with the scammer was disconnected. Miss S waited for ten minutes and then checked her Revolut account, which showed payments to third parties. She called Santander to report the scam.

Santander didn't agree to reimburse Miss S. It said Miss S authorised the transactions and it wasn't liable.

Miss S was unhappy with Santander's response and brought a complaint to this service through a professional representative. She referred to various sections of the Contingent Reimbursement Model Code ('CRM Code') to support her belief that Santander is responsible for her loss.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. She said Santander should reimburse 50% of payment five. This was because by this stage a pattern of increasing transactions had emerged and this payment almost drained Miss S' account – all of which was unusual given the usual operation of the account. But Miss S' actions meant she should share responsibility for her loss.

Santander initially raised objections but later agreed with the investigator's findings, but Miss S did not. She asked for a final decision, so her complaint has been passed to me. In summary, Miss S said that Santander should have intervened earlier as she was making larger than normal transactions to a new payee in rapid succession, which represented a significant change in the use of her account. Miss S' representative also quoted a section of the CRM Code and said that based on it, Santander should have stopped suspended the payments.

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.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

Many of the points made by Miss S' representative relate to the operation of the CRM Code. Whilst Santander is a signatory to it, the code doesn't cover all transactions. At DS1(2) the code sets out that it applies to certain transactions where a customer transfers funds "to another person". In this case, Miss S was transferring funds to an account in her own name, not to another person – meaning that the provisions of the CRM Code referred to by Miss S' representative don't apply here.

In broad terms, the starting position at law is that a bank like Santander is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Looking at what is fair and reasonable, I consider that Santander should in October 2023 have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.

Overall, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable that Santander should:

- have been monitoring accounts and any payments made or received to counter various risks, including 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 firms 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; and
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving and the different risks these can present to consumers, when deciding whether to intervene.

It isn't in dispute that Miss S has fallen victim to a cruel scam here, nor that she authorised the payments she made by transfers to her newly opened EMI account.

I need to decide whether Santander acted fairly and reasonably in its dealings with Miss S when she authorised payments from her account or whether it could and should have done more before processing them.

In this case Miss S was transferring funds to an account in her own name. I consider Santander could reasonably be reassured of this based on confirmation of payee results. Transfers to own accounts carry less risk than transfers to a third party and, whilst the amounts Miss S transferred were larger than normal, they were still relatively low, and not at a level where I'd expect Santander to be concerned. So I consider Santander acted reasonably in processing transactions one to four without taking any additional steps. There's a balance to be struck between Santander identifying concerning payments and responding appropriately to any concerns, and minimising disruption to legitimate payment journeys.

When Miss S attempted to make payment five, I think Santander ought fairly and reasonably to have recognised there was a heightened possibility that the transaction was linked to a scam and intervened to ask her questions about it. By this stage there was a clear pattern of increasing payments in a short timescale, and Miss S' balance, which usually remained at a fairly consistent level, was almost depleted.

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 S 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 customers of multi-stage fraud were well known to banks in 2023.

I think Santander should have asked Miss S why she was making the transfers, when the account was opened, and why she was making a series of payments rather one larger transaction. I'm satisfied that if it had done so, the scam would have unravelled and Miss S' loss prevented. Miss S had no reason to lie to Santander and would have explained she was moving funds to keep them safe.

I've gone on to decide whether Miss S should be held partially responsible for her loss. In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

I recognise that there were persuasive elements to this scam including that the scammer knew personal details about Miss S. I also recognise that Miss S feared that she would lose her funds and was put under pressure to act quickly. But overall, I consider a 50% deduction to reflect Miss S' actions is fair and will explain why.

Miss S was contacted by someone who said they worked for another bank she holds an account with. I can't see how this person could have known anything about Miss S' account with a separate bank (Santander) or have been in a position to tell her the account was

compromised. The call was from a withheld number, which is unusual, as was the fact Miss S was asked to make multiple smaller transactions. And I consider Miss S ought reasonably to have had concerns about a bank asking her to open a new account with an EMI and transferring funds to that account.

Miss S' representative has noted that she contacted Santander very soon after the payments were made, and has said that Santander should have stopped them. Faster payments are almost immediate, meaning that by the time Miss S contacted Santander to report the scam all payments had been processed. Santander tried to recover funds and established that they went to an account in Miss S' name, so there was nothing it could do to recover them.

Overall, whilst I'm very sorry to hear about this cruel scam and the impact it has had on Miss S, I can't fairly ask Santander to reimburse her more than half of her final payment.

My final decision

For the reasons stated, I uphold this complaint and require Santander UK Plc to:

- Pay Miss S £1,000; and
- Pay interest on the above amount at the rate of 8% simple per year from 25 October 2023 to the date of settlement.

If Santander UK Plc is legally required to deduct tax from the interest it should send Miss S a tax deduction certificate so she can claim it back from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 May 2025.

Jay Hadfield
Ombudsman