

## **The complaint**

Miss W and Ms G complain that Santander UK Plc (“Santander”) won’t refund payments they made as part of a 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.

In May 2024, Miss W was looking to invest her funds as she was approaching retirement. She searched online for an investment and came across a company offering their services. This company is further referred to as Company A. Miss W filled in an enquiry form and was contacted a short time later by an employee of Company A via a well-known messaging service.

Miss W was given further information about the investment and how Company A operated. Satisfied with the information, Miss W decided to invest her funds. Miss W saw her initial investment perform well and decided to invest further funds. Miss W went on to apply for numerous loans in order to fund additional investments.

In total, Miss W made payments totalling £92,250 from her Santander account between October 2023 and January 2024 as part of the scam.

In February 2024, Miss W was unable to contact Company A and realised she’d been the victim of a scam. Miss W contacted Santander to make them aware of the situation. Santander looked into the matter but declined to reimburse Miss W and Ms G on the basis that she authorised the transactions.

In June 2024, Santander issued their final response to Miss W and Ms G’s complaint. Santander explained that, as the payments were made to account in Miss W’s own name, the Contingent Reimbursement Model (CRM) Code was not applicable. Unhappy with this response, Miss W and Ms G referred their complaint to our service.

An investigator looked into Miss W and Ms G’s complaint and upheld it, in part. The investigator found that the payments were sufficiently out of character in comparison to the usual operation of Miss W and Ms G’s account that they warranted intervention from Santander prior to their release. The investigator felt that, had appropriate intervention have taken place, the scam would’ve been uncovered. But, the investigator also felt that Miss W and Ms G should share some liability for her loss.

The investigator recommended that Santander reimburse Miss W and Ms G 33% of the payments made from the first payment of £10,000 on 11 December 2023 (payment 12 in the table above), as well applying 8% interest from the date the payments were made to the date of settlement.

The investigator clarified that they were awarding 33% of the payments from this date as they felt that liability for these payments should be shared between Miss W and Ms G and

both banks involved i.e. Santander and the bank the Santander payments were made to, which were then paid to Company A. This bank will be further referred to as Bank A. Santander disagreed with the investigator's findings and supplied further evidence and arguments including, but not limited to, the following:

- Miss W and Ms G should be pursuing the loss they incurred against Bank A as the payments to Company A were made from these accounts; meaning that Miss W and Ms G's loss occurred from this account.
- The payments weren't unusual enough to have suggested that the consumer was at risk of financial harm and Santander acted in line with industry standards whilst following Miss W and Ms G's instructions to transfer the funds.
- It's not reasonable for our service to assume whether any proportionate questioning by Santander at the time of the payments would've exposed the scam.
- Santander were obliged to carry out their customers' payment instructions, as confirmed in the Supreme Court's decision in the case of Phillips v Barclays.
- Miss W and Ms G should accept liability given the lack of research carried out on Company A and the investment.

As the complaint couldn't be resolved by the investigator it was passed to me for a decision.

### **What I provisionally decided – and why**

In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Both parties have provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of Miss W and Ms G's complaint. This is not meant to be a discourtesy to either party and I want to assure them I've considered everything that has been submitted carefully.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a bank such as 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.

Here it's not in dispute that the payments were authorised, so the starting position is that Santander isn't liable for the transactions.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Santander also has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts

safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

Taking these things into account, I need to decide whether Santander acted fairly and reasonably in its dealings with Miss W and Ms G.

*Should Miss W and Ms G be reimbursed under the CRM Code?*

Santander are a signatory of the CRM Code which requires firms to reimburse customers who have been the victims of authorised push payment (APP) scams in all but a limited number of circumstances.

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to “another person”. Importantly in this case, Miss W and Ms G made the faster payments to accounts in Miss W’s own name which she had control of. Because of that, the faster payments Miss W and Ms G made do not meet the CRM Code’s definition of an APP scam and are therefore not covered by the Code.

Further to this, within the Code, it’s clarified that it only covers ‘the transfer of funds executed across Faster Payments, CHAPS or an internal book transfer’.

This shows that card payments are not covered by the Code. Because of this, I can’t say that Santander has acted incorrectly by not considering any of the payments made by debit card under the CRM Code.

That said, I’ve gone on to consider whether there are any other reasons outside of the CRM Code for which Santander should be held liable to reimburse Miss W and Ms G’s loss.

*Should Santander have raised a chargeback?*

Some of the payments Miss W and Ms G have disputed were made using his Mastercard debit card. This means that the payments are covered by a scheme run by Mastercard, known as ‘Chargeback’.

Importantly, this scheme offers a route of resolution in disputes between consumers and the merchant to whom the payment has been made.

In order for me to find in favour of Miss W and Ms G, I’d need to be satisfied that, on the balance of probabilities, their chargeback claim stood a reasonable chance of success. But, on the balance of probabilities, I find it unlikely any chargeback raised on behalf of Miss W and Ms G stood a reasonable chance of success given the likelihood that the merchant has supplied goods and services.

Further to this, based on the information available to them at the time of the dispute, I don’t think it was unreasonable for Santander not to have raised a chargeback given it’s unlikely it would’ve been successful.

Finally, as some of the card payments were to Miss W’s own account with other financial institutions, I’m satisfied that any chargeback attempt for these payments would’ve been unsuccessful as there doesn’t appear to have been any failing on behalf of these companies as they provided the service paid for.

*Should Santander have intervened when Miss W and Ms G made the payments? If so, would this have made a difference?*

In reaching my decision that Santander should have made further enquires, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC* [2023] UKSC 25. 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 31 July 2023 terms and conditions gave it rights to:

1. Not make a payment if it reasonably believes the payment may be connected to a scam, fraud, or other criminal activity.
2. Not a make payment to protect against or reduce the risks of scam, fraud or any other criminal activity.
3. Delay payments whilst checking whether these situations apply and to contact the consumer before making the payment.

Based on this, as well as the fact that Santander did intervene and block one of the disputed transactions, I'm satisfied that Santander did have the capability, and right, to prevent any payments that was connected to a scam at the time Miss W made the payments.

Santander called Miss W prior to releasing the payment of £7,000 on 11 November 2023 in order to discuss the nature of the transaction. Having listened to the phone call, Miss W tells Santander that the payment is going to another account in her name and is for a holiday.

Having reviewed Miss W and Ms G's statements with Bank B, I can see that she makes two payments totalling over £9,000 to a well-known travel company between August and November 2023. Further to this, based on the messages shared with the scammer, Miss W appears to be on holiday in late December 2023.

This suggests that, even if Santander question her further than it did, Miss W would've been able to give a full and thorough explanation regarding the payment. Because of this, I don't believe that Santander should've, or could've, identified that Miss W was falling victim to an investment scam, given the lack of indications that she may be falling victim to that particular type of scam and the detailed and plausible cover story she'd have been able to provide at the time.

But, I've considered whether any of the other payments made from Miss W and Ms G's account were suspicious enough to have warranted intervention from Santander. Having reviewed the account, I believe Santander ought to have intervened and discussed the purpose of the second payment of £10,000 on 11 December 2023. I say this because the payment represents a significant increase in the spending on Miss W and Ms G's account. I believe this departure was so significant from the genuine usage of the account

that it ought to have caused Santander concerns that Miss W and Ms G might be at risk of fraud and financial harm.

The payment could be considered a large payment in and of itself but, importantly, it was the second payment of £10,000 Miss W and Ms G were making to the same payment within 2 minutes. Furthermore, this took the overall spending on Miss W and Ms G's account to £30,000 in three days, something which is very unusual in comparison to the genuine usage of the account.

Given the significant increase in spending explained above, I'm satisfied Santander ought to have discussed the payments with Miss W and Ms G prior to releasing the payment. I accept the payments were going to an account in Miss W's name and that this was an established payee, but I don't think this aspect of the payment outweighs the other characteristics of the payment; and that the payment still presented itself as a potential risk to Miss W and Ms G and warranted intervention prior to its release.

Miss W was advised by the scammer to say these payments were for home improvements. This is something which is also corroborated by the loan agreements I've seen. Based on what the evidence available, I don't think it likely Miss W would've been able to provide a plausible and convincing cover story during any intervention with Santander.

Had Santander have reviewed Miss W and Ms G's account on 11 December 2023 they'd have seen that they'd received £45,000 worth of loans from three different companies. Given this amount, it's reasonable to assert that the work being carried out on her property would've been substantial. But, I've seen nothing to suggest that Miss W and Ms G was having any construction or home improvement work on her property at the time, meaning she'd unlikely have been able to explain what works were being carried out with any great detail. Furthermore, she'd have unlikely been able to provide any documentation regarding this and, given the substantial sums involved, would've been very concerning for Santander.

I appreciate that Miss W had previously advised Santander that she was making payments as part of a holiday and that she may have used this an explanation for the purpose of the payments during additional intervention. But, given the significant sums involved, even if Miss W explained that the payment was for a holiday, I don't think she'd have been able to have provided sufficient information and documentation to Santander to demonstrate that this was a genuine reason.

As that's the case, I'm satisfied that Miss W and Ms G wouldn't have been able to answer any questions regarding the payments satisfactorily and that this is an instance in which Santander ought to have refused the payment instruction.

*Should Miss W and Ms G share responsibility for her loss with Santander?*

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. In this case, I'm satisfied that it would be fair for Miss W and Ms G to share responsibility for her loss with Santander.

It's unclear as to how much Miss W and Ms G's alleged investments had increased at time of the second payment of £10,000 on 11 December 2023 referenced above. Having reviewed the correspondence between Miss W and Company A, the scammer regularly references returns of around 20%, often in a number of days since Miss W's investment payment. These rates of return seem very high and of a level that is too good to be true – and should've resulted in additional checks by Miss W and Ms G.

Company A instructed Miss W to mislead a number of financial institutions in order to take out loans. This is something one wouldn't expect of a legitimate investment company and ought to have caused concern to Miss W that Company A may not be genuine.

I can't see that Miss W and Ms G did any checks on Company A before making the first payment as part of the scam. Miss W says she carried out a brief search using an online search engine, but nothing further. By 11 December 2023 Miss W was investing significant amounts of money with Company A. Given the concerning features of the investment and the actions of Company A mentioned above, as well the sums Miss W and Ms G were investing, I would've expected to have seen some detailed checks being carried out to confirm that the investments being made were with a legitimate company.

On that basis, I'm satisfied that it's fair for Miss W and Ms G to share responsibility for their loss.

### *Share of liability*

In the investigator's assessment, they recommended a 34% deduction for contributory negligence based on the fact that both Santander and Bank A are responsible for the same loss and Miss W and Ms G share some responsibility too.

I've considered this finding and, while I know this will be disappointing for Miss W and Ms G, I think that the share of liability recommended should be changed.

I've looked at the mistakes made by both businesses and I've found them to be very similar in nature – they both should have recognised that Miss W and Ms G were at risk of financial harm from fraud and prevented some of the loss. Where two businesses have made the same or similar mistakes, I don't think their combined mistakes mean that they are more at fault than they would be if only one of them had made that mistake.

Because of this, I think Miss W and Ms G should bear equal responsibility for what happened with Santander and Bank A. This means that Santander should refund 25% of the payments made from, and including, the second payment of £10,000 on 11 December 2023.

Furthermore, Santander should pay interest on the refund of 8% simple interest, calculated from the date of the payments until the date of settlement, as they missed the opportunity to prevent the scam continuing from this point onwards.

### *Returns from Company A*

In January 2023, Miss W and Ms G received a payment of £1,807.69 from Company A in order to cover the monthly loan repayments for the loans Miss W and Ms G had taken out as part of the scam.

Because of this, I'm satisfied that this credit from Company A should be deducted from the total loss Miss W and Ms G have incurred as they had the benefit of the funds, given that they have reduced their overall debts and liabilities with the loan companies.

These returns should be apportioned equally between Santander and Bank A, given they were paid to Miss W and Ms G to make the direct debit payments on loans they'd taken out to fund the scam payments I'm recommending reimbursement of.

### *Recovery of funds*

I've considered whether Santander did what they should have when they were made aware that Miss W and Ms G had fallen victim to a scam with respect to attempts to recover Miss W and Ms G's funds. But, as the payments (barring the first) went to accounts in Miss W's own name and had already been paid to Company A, there was nothing Santander could've done to recover Miss W and Ms G's funds.

### **Putting things right**

To put things right Santander Bank UK Plc should:

- Refund 25% of the payments made from, and including, the second payment of £10,000 on 11 December 2023. Santander should deduct 50% of the £1,807.69 payment received from Company A prior to calculating the amount to reimburse. I calculate this sum to be £16,024.04.
- Pay interest on the refund of 8% simple interest, calculated from the date of the payments until the date of settlement.

### **My provisional decision**

My provisional decision was that I intended to uphold this complaint, in part, and require Santander Bank UK Plc to reimburse Miss W and Ms G as set out above.

### **Responses to my provisional decision**

Miss W and Ms G responded to say they had nothing further to add to my provisional decision.

Santander responded to say that their position remained the same and that they'd await the receipt of my final decision.

As I've received a response from all parties I'm going to proceed with 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.

As I've received no additional arguments or evidence following my provisional decision, I see no reason to reach a different outcome in my final decision.

Because of that, I'm satisfied that Santander ought to reimburse Miss W and Ms G for the reasons explained in my provisional decision.

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- Pay interest on the refund of 8% simple interest, calculated from the date of the payments until the date of settlement.

If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss W and Ms G how much it's taken off. It should also give Miss W and Ms G a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint, in part, against Santander Bank UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W and Ms G to accept or reject my decision before 14 October 2025.

Billy Wyatt  
**Ombudsman**