

The complaint

Miss S complains Santander UK Plc didn't do enough to protect her when she fell victim to a scam.

What happened

The background of this complaint is well known to both parties, so I won't repeat everything here. However, in summary, Miss S received a call from a scammer, who said he was calling from Santander. The scammer explained that an email she received from Royal Mail stating that they had not been able to deliver a parcel and asked her to click a link to reschedule the delivery was indeed a scam, which has resulted in her personal details and her Santander account being compromised. The scammer explained he would set up a new account for Miss S to move her money into. As a result, Miss S moved her money from her Santander account to an account in her own name she held at an electronic money provider, which I will refer to as 'R', and from there onto the scammer. Miss S thought the situation was urgent and carried out the scammer's instructions.

Miss S made the following payments from her Santander account to R as part of the scam, and from there she transferred £75,624.57 onto the scammers:

Payment	Date and time	Amount
1	7 October 2024 at 13:02	£20,000
2	7 October 2024 at 13:05	£19,000
3	7 October 2024 at 13:07	£11,000
4	7 October 2024 at 14:00	£20,000
5	7 October 2024 at 14:02	£19,000
6	7 October 2024 at 14:03	£11,000
Total:		£100,000

Miss S realised she had been a victim of a scam when she was still on the call with the scammers, and her boyfriend called Santander and explained what was going on. When she challenged the scammers they laughed and ended the call.

Santander didn't uphold the complaint and said the payments went from Miss S's Santander account to an account in her own name at R and from there she moved the funds onto the scammer, so Santander is not the point of loss.

The complaint was referred to the Financial Ombudsman. Our Investigator thought it should be upheld in full, with R and Santander sharing 50% split liability for the total loss Miss S suffered. In short, she said:

- Santander should have been concerned by Payment 1, because of the value of the payment and the payment not being in line with her usual account activity.
- If Santander had intervened and asked Miss S a series of questions on the phone about the payment, they could have uncovered the scam and prevented the loss, as Miss S thought she was on the phone to Santander.
- There is no evidence to suggest Miss S was given a cover story by the scammers, so if Santander had called her and asked probing questions explaining the main features of what a safe account scam looks like it would have resonated with Miss S.
- Miss S didn't act unreasonably in her actions, as she questioned the legitimacy of the caller and attempted to verify the number the scammer called her from. She also questioned the payments throughout, and as the scammer was able to provide her with personal information that only her bank would have known, she felt the call was genuine. As a result, the Investigator, felt the actions of Miss S were fair and reasonable given the circumstances of the complaint, so she didn't feel Miss S should be held liable for the loss.
- To put things right, Santander should refund 50% of the total loss from Payment 1 onwards which is the point it should have intervened.
- Santander should also pay 8% simple interest per year from the date of each transaction to the date of settlement.

Miss S accepted the Investigator's view, but Santander didn't. In summary, it said:

- The payments were made on 7 October 2024, so R should reimburse them fully under the mandatory reimbursement scheme.
- The payments which Miss S sent from her Santander account to her account with R were all bill payments, which had been set up by her on 27 March 2023, and had been used previously to send money to R, so it wasn't a new bill payment.
- Miss S had full control over both her Santander and R accounts, and it had no way of knowing what Miss S intended to do with the funds once they credited her R account.
- As there is a regulatory framework that supports full mandatory reimbursement with the losses split between R and the receiving bank, by side stepping the regulations and asking Santander to pay 50%, it opens up the possibility of double reimbursement if she also raises a separate complaint with R.

In response to Santander's points, the Investigator said, while she accepts the loss to the scammers has taken place from Miss S's account with R, the payments she made to the scammers were card payments, so they weren't covered under the mandatory reimbursement scheme. The Investigator also mentioned Miss S had only made one payment of £12.49, to the established payee (her account with R) before Payment 1 of £20,000, so it was significantly out of character for her previous account activity, so her opinion remained the same, and she would be holding both R and Santander equally liable for Miss S's loss. R have accepted 50% liability on the separate complaint with our service.

As no agreement could be reached, the matter has been passed to me to decide.

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.

Having done so, I agree with the conclusions reached by the Investigator. I'll explain why.

In broad terms, the starting position in law is that a bank is expected to process payments that their customer authorises them to make. Here, it isn't disputed that Miss S knowingly made the payments, albeit under the instructions of the scammer and so, I'm satisfied she

authorised them. Therefore, under the Payment Services Regulations 2017 and the terms of the account, Santander are expected to process the payments, and Miss S is presumed liable for the loss in the first instance. But that's not the end of the story.

Taking into account the relevant law, regulations, industry guidance, and best practice, firms like Santander ought fairly and reasonably to have systems in place to monitor transactions and accounts for signs that its customer might be at risk of financial harm through fraud. Where such risks are detected, there ought to be action from the bank to intervene through the giving of warnings and scam education. Sometimes, that will mean stopping a payment so that the customer can be questioned directly about it.

Where there is a failure by a firm to properly intervene and protect a customer, it might then be fair and reasonable to say that firm becomes responsible for the customer's loss. And so, in Miss S's case, it's for me to determine if Santander made any errors over the course of the scam and, if so, whether it's fair and reasonable for it to be held responsible for Miss S's loss as a result.

Santander should also have been aware of the increase in multi-stage fraud 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. We have seen a significant increase in this type of fraud over the past few years - and it's a trend Santander ought fairly and reasonably to have been aware of at the time of the scam too.

The fact that the money used to fund the scam wasn't lost at the point it was transferred to Miss S's own account with R, does not alter that fact and I think Santander can fairly be held responsible for Miss S'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.

Having reviewed the pattern of payments made by Miss S and taking into consideration the prior account usage, I'm satisfied Payment 1 was sufficiently unusual and out of character that Santander ought to have contacted Miss S prior to processing its payment instructions.

Miss S transferred a total of £100,000 from her Santander account within 1 hour and 1 minute, taking her account balance from just over £100,000 to £327.24, which should have highlighted to Santander that Miss S might be at a heightened risk of financial harm due to fraud or a scam and should have intervened. Given the value of Payment 1 (£20,000), I think it's reasonable to expect Santander to have attempted human intervention to establish the purpose of payment and ask further questions before allowing the payment to be made.

Santander have said as the payments were made to an already established payee (Miss S's R account), no intervention was necessary and no payment reason was required. As a result, there were no tailored warnings shown to Miss S when she attempted the payments.

When considering whether the actions of Miss S has contributed to the loss she has suffered, I must consider whether her actions showed a lack of care that goes beyond what we would expect from a reasonable person. I must also be satisfied that the lack of care directly contributed to her loss.

I've not seen any evidence of Miss S being coached or her being given a cover story should her bank ask her any questions. So, I have nothing to doubt that if Santander had intervened as I would have expected on Payment 1 and asked probing questions about the nature of the payment, it would have been able to uncover the scam, especially as she thought she was speaking to Santander and not a scammer.

I have considered that there were sophisticated aspects to this scam – including, as Miss S has mentioned, the scammer knowing some personal details, which only her bank would have known. I also acknowledge that Miss S would've understandably been concerned about her money being at risk of being lost. I say this due to the sophisticated nature of the complaint and its reliance of pressure tactics and panic to get customers to transfer large amounts of money in quick succession, which was the case in Miss S's case. I've also listened to the call Miss S had with Santander when she reported the scam, and she mentioned she had questioned the scammers and asked them to confirm where they were calling from before making the payments in question. I think an intervention as mentioned above would have reinforced her own concerns and prevented her from going ahead with the payment. Therefore, I'm satisfied, Miss S acted reasonably in the circumstances, so I wouldn't be making any reduction to the refund she should be provided with.

As a result, I'm satisfied Santander can be fairly and reasonably held partly responsible alongside R for Miss S's loss.

For completeness, I've considered Santander's points about the payments being fully refundable by R under the Authorised Push Payment (APP) Scams Mandatory Reimbursement ('ASR rules') scheme. But the ASR scheme isn't applicable to card payments, which was the case with the payments Miss S made from R to the scammers. So that means the payments Miss S authorised, albeit while under the instructions of the scammer, aren't covered by or within the scope of the ASR rules, so, it can't be used as a basis to expect more from R.

I've also considered whether, on being alerted to the scam, if Santander could reasonably have done anything more to recover Miss S's loss, but I don't think it could have. Had funds remained, Miss S would've already been in control of them in her account with R. So, I wouldn't have expected Santander to have done anything else to recover Miss S's funds.

Putting things right

I've found that Santander UK Plc ought to have done more here to prevent Miss S from making the payments to the scam. To put things right, Santander UK Plc should:

- Refund 50% of Miss S's losses to the scam (this equals £37,812.28); and
- Pay interest at 8% simple per year from the date of the payments to the date of the settlement, for Miss S's loss of use of the funds (less any tax lawfully deductible).

My final decision

My final decision is that I uphold this complaint, in part. Santander UK Plc should put things right in the way I've set out above.

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Israr Ahmed
Ombudsman