

complaint

Mr and Mrs W complain that Santander UK Plc won't refund some money they say was taken out of their account by a fraudster.

background

Mr W was contacted by somebody claiming to be from Talk Talk (his internet service provider). But it turned out this wasn't the case – the person calling was a fraudster.

Mr W (and at some point Mrs W) spent a long time on the phone to the (now known to be) fraudster. I'm only going to summarise what Mr W says happened.

He was asked if he'd been having problems with his computer. As it'd been running 'slow' for some days, and the person knew information about his Talk Talk account, Mr W thought the call was genuine. The fraudster said he'd be able to fix Mr W's computer. It seems Mr W gave the fraudster remote access to his computer at some point during the call.

The fraudster explained the problem was the age of Mr W's router. He said Mr W needed a new one and said he was entitled to a refund (of £250). But he'd need Mr W's (Santander) bank details to be able to make the payment. And Mr W would be sent a code (to his mobile phone), which he'd need to pass on. Mr W did this. He was told not to use his computer or mobile phone for some time because of a possible radiation threat.

A short while later, Mr W became more suspicious about what had happened. So he went to a neighbour's house and (using the neighbour's computer) logged on and checked the balance in Mr and Mrs W's account. Nearly all the money had gone – £3,900 had been transferred out of their account. Mr W rang Santander to report what'd happened and try to get the money back. But, even by then – only a few hours later – there was no money left in the account where the fraudster had transferred it to.

Santander wouldn't refund the money. It said the payment of £3,900 had been authorised using a one time passcode (OTP) sent to Mr W's mobile phone. Mr and Mrs W weren't happy with what the bank said, so they contacted us. They say Santander was negligent in allowing such a large payment to go out of their account – particularly as it was a relatively new account. And they hadn't signed up for the OTP system in any event.

One of our adjudicators looked into Mr and Mrs W's problems. But she didn't think it'd be right to ask Santander to pay them the money back. She thought that by Mr W passing on the OTP, it could be argued he'd authorised the payment. And, even if this wasn't the case, she didn't think Mr and Mrs W had acted with proper care here. The OTP he'd been sent was part of a message that was clearly to make a payment of £3,900 (to the fraudster).

Mr and Mrs W didn't agree with what the adjudicator said so their complaint has been referred to an ombudsman to make a final decision. In summary, Mr and Mrs W have restated their earlier points – focussing on Santander being negligent in allowing the large payment to go ahead and them not being signed up for the OTP system.

my findings

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

I can see Mr and Mrs W are very upset by what's happened. That's clear from what they've said to both us and Santander. And I can understand why. They've been the victims of a cruel scam and lost a lot of money. They have my sympathy about what's happened.

But I'm afraid I have to tell Mr and Mrs W that I think the adjudicator (and Santander) has reached the right outcome here. I don't think it'd be fair to make the bank refund them the money the fraudster's taken from their account.

There's little I can add to what the adjudicator's already told Mr and Mrs W. I think she set out the position clearly and thoroughly. But – as I explain later – I think it's more likely Mr W authorised the payment.

It's clearly not fair Mr and Mrs W have been the victims of a scam, and lost a large amount of money. But that doesn't necessarily mean it'd be fair for Santander to have to bear that loss. It's the fraudster that should pay Mr and Mrs W back the money they've cruelly tricked them out of. But I accept that's unlikely to happen.

I must decide cases by reference to what's fair and reasonable – taking into account any relevant law, amongst other things. So I've considered the account terms – as these form the basis of the contract between Mr and Mrs W and Santander.

Those terms say Santander could debit Mr and Mrs W's account if they authorised the payment. The same applies if, with gross negligence, Mr and Mrs W disclosed their security details to someone else. The term "gross negligence" is in the relevant banking rules; it means being more than just careless. So I've considered whether either of these applies – in other words, did they take proper care?

did Mr and Mrs W authorise the payment?

The adjudicator thought the payment probably was authorised. I can see why she said this. I agree – and I'll set out why I think that's the case.

In the call Mr W made to Santander (when he realised what had happened a few hours later) he tells the bank the fraudster "got me to log in and said they'd take it from there" and "I put the four numbers [from the OTP] in".

I know that as time's gone on, Mr W's recollections of what happened have changed. He said he didn't give any of his bank details out and the fraudsters must have been able to find these out from records on his computer. This is quite possible. And I'm aware he's now adamant he didn't log onto his online banking.

But I think he did – based on what he told Santander in the call to the bank. I'm not criticising Mr W in any way if he can't quite remember what happened some months ago. He's clearly been upset by what happened. But it seems he did have a clear recollection on the day.

So – on balance – I think what Mr W told Santander on the day is more likely to be what actually happened. It'd be fresh in his memory. So I don't think the adjudicator was wrong to say Mr W authorised the payment.

did Mr and Mrs W take proper care?

Although I've said I think it's more likely the payment was authorised, I do need to touch on whether Mr and Mrs W took proper care. This is because Santander's reasons for not giving them a refund rely on this – in part.

The OTP sent to Mr W's mobile phone was clear it was to make a payment of £3,900 to an account. It gave the amount and the last four digits of the account number to where the money was to be paid.

It's difficult to see why Mr W might think this was about a refund connected with getting a new router. I think this would be a significant factor in deciding whether Mr and Mrs W might be regarded as not taking enough care.

It's clear the person calling was able to convince Mr W they had information about his Talk Talk account. Mr W says this is probably as a result of a well-publicised data security breach at Talk Talk. I don't know whether that's actually the case. I've no reason to doubt what Mr and Mrs W say here. But scams such as these are – by their very nature – convincing.

I think many people would say Mr and Mrs W didn't take enough care. I'm minded to agree – in these particular circumstances.

should Santander have allowed the payment to go through?

This is something Mr and Mrs W feel strongly about. The account was relatively new. And the payment of £3,900 was for almost the whole balance. Mr and Mrs W think Santander was negligent in allowing the payment to go through. After all, the bank's own information says it may stop suspicious or high value payments.

It's important to remember banks should – in general – act on the instructions of their customers. And that's what Santander did here.

The request for the payment was made using Mr W's online banking details. Whether Mr W or the fraudster made the payment, those details should be kept safe. Santander wouldn't have any reason to think anybody other than Mr or Mrs W was making the payment.

But the bank does have an added level of security for things like first payments to new payees. In this case, Santander sent an OTP to Mr W's mobile phone. And the code was entered to confirm the payment was genuine. So – again – the bank wouldn't have any reason to think it wasn't acting on Mr and Mrs W's instructions.

were Mr and Mrs W registered to use OTPs?

Again, I'm aware this is something Mr and Mrs W think Santander has got wrong. But I'm not so sure it has. I accept there's some disagreement (and possibly confusion) about this point.

The bank's records show Mr and Mrs W's online banking was used in connection with an OTP only a few days before the scam happened. So they'd used an OTP before. And it seems they were 'registered' for the OTP system because Mr W had a Santander credit card and it was set up through that – and then automatically applied to the new account.

It's not clear whether Mr W ever used an OTP with his credit card. If payments were made by direct debit, rather than as one-off transactions, an OTP may not have been necessary – particularly as they would have been 'internal' between Santander accounts.

While I accept there's some disagreement on this point, Santander's records are clear Mr and Mrs W had used an OTP before. So I think it'd be unfair to say Santander was at fault in using an OTP – after all, this was used to try and protect Mr and Mrs W's money.

summary

When I combine all the above, I really don't think it'd be fair to make Santander refund the money Mr and Mrs W have lost. As I said earlier, it's clearly not fair they've lost that money – but it doesn't mean it'd be fair to make the bank pay them back.

I think it's most likely Mr W authorised the payment. But, even if I didn't, I'd say Mr and Mrs W didn't take proper care by allowing somebody access to their online banking and then make the payment.

While I realise Mr and Mrs W feel differently, I don't think Santander did anything wrong in allowing the payment to go through. The bank would reasonably think it was acting on its customers' instructions. And I don't think any disagreement about whether Mr and Mrs W were 'registered' for the OTP system changes what actually happened.

I know Mr and Mrs W will be disappointed with this. But I hope they understand my reasons. Given how strongly they feel, they may want to take their complaint further through other means. But my decision brings to an end what we – in trying to resolve the dispute informally – can do for them.

my final decision

For the reasons I've given, my final decision is that Santander UK Plc doesn't have to refund Mr and Mrs W the money they've lost.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 6 November 2015.

Andrew Davies
ombudsman