

complaint

Miss W complains that Santander UK plc won't refund her money after she was a victim to a scam.

background

Miss W says that Santander called her to tell her that her account was being hacked and she needed to move some money to a holding account to keep it safe. She agreed to do so and transferred £1,100 to an account using the bank details she was given. At the same time, her card was being used overseas and Santander blocked the transaction. She later found out that the call she thought was from Santander was a scam. The bank hasn't been able to get the money back.

The adjudicator didn't recommend that this complaint should be upheld. He said that Miss W had authorised the payment by using the security code Santander had sent to her. The bank had tried to recall the payment but the receiving bank couldn't send it back.

Miss W responded to say, in summary, that Santander should have noticed that this was an unusual transaction. And it hasn't acted positively and sympathetically now she is experiencing difficulties because it continues to apply charges.

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 understand Miss W's concern. She was tricked into making a payment of £1,100 from her account in good faith to another account that she believed was secure. She doesn't think Santander should have allowed the payment to be made and its system should have flagged it up as being out of character for her.

I have carefully reviewed everything that happened. The payment was made online from Miss W's account to what she thought was a 'safe' account. She provided the sort code and account number and I'm satisfied the funds were sent to and received by the bank as Miss W instructed. Santander's online banking system requires an extra level of security when a payment is set up to pay a person for the first time. As this was a new account, which Miss W was paying into for the first time, Santander sent a One Time Passcode (OTP) to her mobile phone. She entered this on the computer and so authorised the payment.

Santander says that Miss W gave clear instructions to make a payment so it can't be held liable. She authorised the payment. And Miss W agrees that she made the payment. But she argues that the fraud would not have been possible if Santander had acted to stop the payments before it was sent. But ordinarily, a bank must act on the instructions of its genuine customer. It has no general duty (or right) to challenge the instructions or to delay, so I can't see that Santander was at fault in sending the payment. And once the payment had left, Santander wasn't able to cancel, amend or recall it. I appreciate that Miss W thinks that Santander should have been able to stop the payment from going, because it didn't show as leaving her account until the next day. The instructions Miss W gave was to make the payment by faster payments and, once she authorised it by entering the OTP, I'm satisfied the payment left the account immediately. As this was after the close of normal business hours, her statement would be updated the following day.

Miss W is also unhappy that the transaction didn't flag up on Halifax's systems as unusual activity and thinks it should have done. But each bank uses different systems and checks when arranging large payment transfers. Halifax is entitled to decide for itself what these should be. This is a matter of its own commercial judgement, with which I can't properly interfere. And, in this case, she made the payment out of her account voluntarily using the OTP.

Once Santander was made aware of the fraud, it had a duty to do its best to try to get Miss W's money back. Although it had no control over the money once it had reached the beneficiary bank account, we would expect to see that it had taken prompt steps to alert that bank and been robust in its attempts to get the money back. I'm satisfied that Santander did this but as the money had been removed within a short time of it being received Santander wasn't successful in getting it refunded.

I have no doubt this has been very upsetting for Miss W and she is a victim of crime. But I am satisfied that Santander hasn't made a mistake. It acted on her instructions in transferring the money and it has followed the right procedures in trying to get the money back. I know Miss W will be very disappointed, and it is a lot of money to lose, but for the reason I've given, I can't fairly ask Santander to refund her.

Miss W says that as a result of the scam, she has been left in financial difficulties and Santander hasn't been at all sympathetic. It continues to add charges and caused her some distress when she talked to it about this. She would like it to stop the charges in the short term to give her some time to sort out her finances. But I'm satisfied that the charges are being added in accordance with Miss W's account terms and conditions, because she is using her overdraft facility. Miss W made the payment herself. There was no bank mistake so I can't ask Santander to refund them. It has already refunded £50 of charges as a gesture of goodwill, which I consider is reasonable.

If Miss W is now experiencing financial difficulties, I would urge her to contact Santander to discuss this. The bank can make enquiries and carry out its own investigations to check the situation but it is expected to treat its customers positively and sympathetically. That might mean coming to a mutually agreeable arrangement about any debt, such as developing a repayment plan or freezing interest and charges on an account – but it doesn't mean that the bank is automatically obliged to do this. As I have already explained, the bank's charges are being levied in accordance with the account terms so I can't order them to be refunded on the grounds that they are unfair (or too high).

Santander accepts that that it didn't provide a satisfactory level of service because it didn't tell Miss W as soon as it could that it wasn't able to get the money back. Miss W had to make a number of calls to discuss this matter, and Santander didn't always deal with her concerns. It has offered to pay £125 for this. I consider this to be fair.

my final decision

My final decision is that I uphold this complaint in part. I require Santander UK plc to pay Miss W £125.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 31 May 2016.

Karen Wharton
ombudsman