

complaint

Ms R complains that Santander UK Plc (Santander) won't refund money she lost when she was the victim of a scam. Ms R also says that Santander treated her '*inhumanely*'.

background

Ms R received a call in July 2016 from someone she thought was from a bank, B. Unfortunately, this was actually a fraudster. The fraudster told Ms R the money held with B was at risk of fraud and it needed to be moved to protect it. When Ms R complained to our service, she said she was sceptical but the fraudster said he was calling from the same number that was on the back of her card with B. Ms R says she checked and this was correct. However, the fraudster was using clever technology to 'spoof' the caller identification so it showed a genuine number for B on Ms R's mobile.

The fraudster asked Ms R if she had other accounts and she said she did, with Santander, which had more money in. So the fraudster said he'd arrange for someone in the Santander fraud department to call her immediately. She then received a call which matched the number on the back of her Santander card. But, again, this was a fraudster.

Ms R says she felt like she was in a trance, doing what she was told by the fraudsters. She was persuaded to make a number of transfers using online banking for the Santander transfers. Ms R made three transactions from her Santander account because she was told that she should move money from her Santander accounts in blocks under £10,000 as it would be quicker and this was urgent. This includes:

- Transferring £9,900 from her Santander account to a 'new' Santander account that had been set up for her.
- Moving £10,000 from Santander to one of the accounts she had with B and then transferring this to her 'new' Santander account.
- Moving money from the savings account she had with Santander into her main Santander account. And, from there, transferring just over £6,800 to another 'new' Santander account. This included most of the overdraft available on Ms R's main Santander account leaving that account overdrawn.

But there weren't any new accounts that'd been set up for her. In total, Ms R sent just over £33,700 to the fraudsters from her accounts with B and Santander.

Ms R was also persuaded to apply for a loan for £25,000 from B. She says the caller said this was because otherwise the fraudsters would get that too so she had to cover all bases. Ms R says this is what the caller had said about the using the overdraft. Fortunately, Ms R's loan application wasn't accepted before she realised what had really happened.

The fraudsters told Ms R that appointments had been set up for her at Santander and B a few days later to collect her new debit cards. And it was only when she went to her appointment with B that she realised what'd happened.

Shortly after Ms R went into the Santander branch to report the fraud, it contacted the receiving bank, as well as B, to try to recover the money. Unfortunately, no money from the Santander transfers was left in the accounts the money had been sent to.

Ms R asked Santander to pay the money to her and raised a number of concerns including the speed of the bank's investigation and why nothing was picked up by its security systems.

Santander says the fraud was only possible because Ms R signed onto her online account to set up the transfers. Santander acted on its customers instructions. In addition, because Ms R set up two transfers to accounts that she hadn't paid before, they also needed to be authorised by Ms R by entering a 'one time passcode' (OTP). To do this, two separate text messages were sent to Ms R's phone. Each text message contained an OTP to authorise the transfers. Ms R input the OTP's into online banking. The first transfer also triggered Santander's fraud detection system and Ms R was contacted to confirm if the transaction was genuine, which she did. Santander says the transfers were only completed as Ms R input the OTP's into online banking and confirmed the first transaction was genuine.

So Santander didn't agree to pay Ms R any of the money sent to the fraudsters. However, it recognised Ms R had experienced delays when trying to open up a new account with it so it paid her £100 as a gesture of goodwill.

Ms R doesn't think this compensation is enough for what she's gone through and how she's been treated. So she brought her complaint to our service. Ms R wants Santander to:

- Refund the amount transferred to the fraudsters direct from Ms R's Santander accounts.
- Properly investigate where her money went.
- Improve its detection systems including adding security warnings next to the internet banking log on and transfers screen about spoofing.

One of our adjudicator's looked into this matter and acknowledged that Ms R had been the victim of a cruel scam. He answered a number of Ms R's specific queries but didn't think Santander was to blame and should take responsibility. This is because he felt unable to say that Ms R's loss occurred because of a mistake made by Santander. Our adjudicator noted the steps Santander had taken once it knew what'd happened, and the compensation it paid to Ms R, and thought this was enough to resolve her complaint.

Ms R didn't agree. She said the banks should check the payee's name in addition to the sort code and account number for transfers. And, if it had done this here, the transfers would've been blocked from going to an account which wasn't in her name. Our adjudicator replied to Ms R to explain that banks are only required to match the account number and sort code on a transfer, not the payee's name. And, as our service isn't the regulator, we can't require a bank to do this. Ms R has responded to refer to the super complaint made to the regulator about how banks should change what they do to reduce scams like this.

The complaint has now been passed to me for a decision. Although Ms R has complained about both B and Santander, this decision only looks at the actions of Santander.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where there's a dispute about what happened, I've based my decision on what I think's most likely to have happened in light of the evidence.

Having done so, I have to tell Ms R that I think our adjudicator has reached the right outcome in this case. I think the adjudicator has set out the position very clearly and thoroughly so there's little I can add to what the adjudicator has already said.

should Santander refund the money transferred to the fraudsters?

Ms R believed, at the time, that she was taking steps to protect her money. And I have great sympathy for her – she's been the victim of a horrible deception which has resulted in her losing a large sum of money. But I have to decide what responsibility Santander has, if any, for Ms R making the payments to fraudsters.

A bank should generally act on its customer's instructions so, if a customer asks to make a transfer and there's enough money in the account, the bank should complete the request. There's no general duty on a bank to check why the customer's making a transfer or ask specific questions. In fact, customers might be unhappy if too many questions are asked.

The transfers in this case were made as a result of them being authorised by Ms R using her secure information, OTP's and normal IP address. So I don't see why Santander would've thought anyone other than Ms R was making these transfers. Santander followed its normal procedures when it dealt with these payments. It even contacted Ms R to check if one of the transfers was genuine. And Ms R confirmed it was. So I don't think I can say it failed to take reasonable steps to alert her to a potential concern identified by its fraud detection systems.

It's clear that Ms R was persuaded she was dealing with Santander. As a result she made transfers of her money to the fraudsters. There's no evidence that Santander's systems were breached - and it was clever technology that replicated the bank's phone number. So I don't think Santander should pay Ms R the money sent to the fraudsters.

should Santander add security warnings about spoofing?

Ms R suggests Santander should add warnings next to the internet banking log on about spoofing. This isn't something our service could tell the bank to do because we aren't the regulator. However, Santander says it has warnings on its homepage and links to security advice which cover scams like this. And it's also written to customers with security advice.

Even so, I don't think it's practical for a bank to set out all scams on its internet banking log in page or when a transfer is being made. I think there's a risk that it'd be so long that customers wouldn't read it. And I don't think this is likely to have made a difference here. I say this because Ms R felt like she was in a trance, doing what she was told to, convinced that she need to act quickly to protect her money.

should Santander's security system have stopped the payments?

Banks are expected to have in place appropriate security arrangements in order to try to prevent fraud. But, these are a matter for each bank to implement. Santander does have fraud detection systems and procedures in place which take account of what it knows about actual and potential risks. However, the way those security measures are set up is a matter for the bank and its regulator. It'd reduce their effectiveness for the details of them and how they work to become well known.

Even so, there's also a balance to be achieved between the bank protecting users of its services from fraud and it allowing customers to make the transactions they want as quickly and easily as they want to. As I've explained, banks should, in general, act on the instructions of their customers. And I think that's what Santander did here.

The requests for the payments were made using Ms R's log in details to sign in to internet banking on her usual IP address. Two of them were specifically authorised by the additional security measure of an OTP sent to Ms R's mobile phone. And one of them had an alert raised to check if it was a genuine transaction which Ms R confirmed it was. So I think it would've reasonably looked to the bank as if they were genuine payments, with the knowledge and authority of Ms R.

should Santander have checked the payee's name?

As our adjudicator has already explained, a bank is only obliged to cross check the account number and sort code, not the payee's name.

Turning now to the super complaint mentioned by Ms R. I appreciate this is an area which the regulator is looking into to decide if further regulation is needed to reduce scams like this one. However, even if the regulator decided to change the obligations placed on a bank when processing a payment, this wouldn't apply looking back to previous transfers before the changes come into effect. This means that the obligations Santander had to comply with in 2016 when processing a transfer wouldn't be affected by any amendment to the obligations Santander has to comply with moving forward as a result of the super complaint.

I don't think Santander needed to check more than the sort code and account number when processing the transfers. And I don't think the outcome of the super-complaint will affect this.

did Santander act quickly enough once made aware of the fraud?

Santander acted quickly to try to recover the money once it was told there was a problem. The money had already been withdrawn before Ms R went to B and realised the fraud. So I don't think Santander would've recovered any money if it'd acted quicker than it did.

the service given to Ms R

I know that Ms R is unhappy with the investigation carried out by Santander and how she's been treated. But I don't think Santander acted unreasonably when it took the steps below.

- Phoned Ms R soon after the fraud was reported to it. I can understand it was a very unpleasant process for Ms R. But I think it's reasonable that a bank would want to understand as quickly as possible what's happened. It is only once it knows this that it can decide how to best try to recover the money for the consumer. It is also the best time to get the full details of the incident because memories change over time and details can be forgotten.
- Investigated and made a decision not to uphold Ms R's complaint in a day. I think it's important for the bank to investigate complaints such as this as quickly as possible. As I've mentioned above, this allows the bank the best chance of recovering some money. I also think it's important for the bank to give its customer some certainty during an incredibly uncertain and difficult time, even if this is news they don't want to hear. Even so, I haven't seen any evidence that Santander missed anything because

it acted too quickly. And I don't think a longer investigation or decision process would've changed the outcome in this case.

- Told Ms R on the phone that there was no money available in the beneficiary accounts or with B. But a letter it sent to Ms R the next day said it'd continue to try to reclaim Ms R's money which Ms R says contradicts this. I can understand why this letter isn't as clear as it could've been but I don't think it was wrong. Santander had contacted B to ask it to raise a claim for the money that'd been moved from Santander to Ms R's account with B and then onto another account. So the letter was referring to waiting for the outcome of this.

Taking everything I've said into account, I don't think Santander should pay Ms R any more than the £100 it's already paid her for the delay in opening a new account and switching over her direct debits. I understand that this pales into insignificance against what she's lost overall and how this scam has made her feel. But I think it's important to mention that our awards are designed to put consumers in the position they would've been in if the bank hadn't made a mistake or done something wrong. And I don't think Santander is responsible for this fraud. I also don't think it made a mistake or did something wrong that allowed this fraud to take place. The money it's offered is for its part in failing to provide the level of service Ms R was entitled to expect when opening a new account. And I think it's important to distinguish these two things.

I can see why Ms R wouldn't feel that this money reflects what she's gone through, and I'm sure it doesn't. But I can only hold Santander responsible for a very small part of her overall experience. And, taking this into account, I think the £100 is fair.

summary

I'm sorry Ms R has been the victim of an unpleasant scam. Clearly this isn't fair. But that doesn't mean it'd be fair for Santander to cover the loss she's suffered. It was only possible for the fraudster to do what he did because of transfers Ms R made and authorised. And, for the reasons set out above, I don't think Santander can fairly be held responsible for what happened here.

my final decision

For the above reasons, I don't uphold Ms R's complaint against Santander UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 23 November 2017.

Rebecca Ellis
ombudsman