

## complaint

Mrs S is unhappy that Santander UK Plc has refused to reimburse her after she was the victim of a scam. She thinks Santander should have prevented the scam from happening in the first place.

Miss A has brought this complaint to our service on behalf of Mrs S, as she has a lasting power of attorney.

## Background

### *what Mrs S says happened*

On 24 January 2019 Mrs S, who was 85 at the time, received a call, to her landline, from a fraudster pretending to be a Chief Constable from the Metropolitan Police. Mrs S says she was asked to call another phone number to verify that he was a Policeman because so many people had been scammed. Mrs S called the number she was given on another phone. She thought she was speaking to a female Police Officer who confirmed the Chief Constable was who he said he was. Mrs S says that from then on, she believed she was dealing with the Police.

When Mrs S later discussed what had happened with Santander after making her complaint (a call I have listened to) she said: *"I suppose being my age, I'd always, the Police to me were always the right people, you never went against the Police, the Police were telling you what to do, so you did what the Police told you to do"*.

Mrs S says the Chief Constable told her that someone had used her debit card to buy a laptop. He said that the Police had also found that the fraudsters had got into her Santander account and the Police were worried that someone in Santander was involved. The Chief Constable said that they needed someone like her to help with their investigation. She agreed to help.

Mrs S says she was subsequently called by a Police Sergeant who asked if she could withdraw money from her account so the notes could be checked to see if they were counterfeit – this was all under the pretence that Mrs S would be helping with a Police investigation. She was told to say she needed the cash to buy a car, if she was asked what the money was for by branch staff. She was told she shouldn't tell anyone what was going on – if she did the Police investigation wouldn't be successful.

Mrs S went to her local branch, on the same day, and withdrew £8,500 in cash from her 123 Santander account. Mrs S says that when in branch, the staff had some concerns over the withdrawal she was making. She was taken to one side by a member of staff and asked what she was using the money for. She says she told the branch manager that she was buying a car to treat herself. Mrs S says the branch member of staff said that *"if there were any problems, she could talk to him"* but she says she felt too frightened to tell him anything.

Mrs S took the cash home where it could be checked. When Mrs S returned home, she was called by the fraudsters again who asked her to read out the serial numbers on the notes. She says she was told that some of them were fraudulent. Mrs S was asked to attend a Police station to hand over the fraudulent notes. She said she couldn't do this, so the fraudster said they would arrange for a courier to come to her home instead. Mrs S said a courier came to collect the cash the same day. She told Santander *"the chap that collected the money was dressed as a security man, everything about it was perfect."*

When Mrs S didn't hear anything back from the Police for a couple of days, she called the actual Police. She was told that the Police wouldn't ask her to do anything of this nature and that she had been the victim of a scam.

Miss A says Mrs S doesn't use internet banking but frequently visits her local branch and is known by branch staff. Miss A agrees that Mrs S was asked some questions; the branch staff and manager enquired what the money was for and suggested using another method of payment. But because she doesn't ever withdraw this much cash, Miss A thinks this request should've been considered as very much out of character for Mrs S. Miss A believes that the staff were uneasy about the withdrawal, so much so that the branch manager walked Mrs S to her car.

Miss A has said she doesn't think Mrs S would have confided in the branch staff because the Police had told her the staff were being investigated. But Miss A believes that if the police had been called, whilst Mrs S was in branch, the scam would've been prevented.

Miss A subsequently reported the matter to the Police. We have spoken with the Police Officer who told us he went to see Mrs S and, having spoken to her, he was not 'particularly satisfied with the banks actions or lack of action' because Mrs S is quite elderly and confused.

The Police Office told us he went to the branch and spoke to the duty manager in the branch and ultimately, they agreed to disagree. He said the banks' position was essentially that it was Mrs S's money and she was entitled to it, but his view was 'what reputable company would require that much money in cash?'. He said the Police constantly send out training in relation to vulnerable people and he said in his opinion the bank were wrong and they should not have given Mrs S the money.

#### *what Santander says happened*

Santander says, when in branch, Mrs S was asked what the money was for and she said it was to buy a new car. She told branch staff that she wouldn't be buying the car alone; she would be taking a friend with her. The branch manager says Mrs S was adamant she wanted the cash that day. Santander says Mrs S said she'd had a prang in her car recently and wanted to change it. The branch manager noticed there was evidence of damage to the passenger door of Mrs S's car when he walked Mrs S to her car after she withdrew the money.

The branch manager says he told Mrs S on three separate occasions that it was his job to protect her money and he offered to call the Police if she was being forced to withdraw the funds or was in any danger. Santander says the branch manager spent seven minutes with Mrs S asking her these questions.

Santander says it believes it did enough to try and prevent the scam and acted correctly in probing Mrs S to understand what the payment was for. It says it read a scam script which provided a warning about being asked to withdraw money by the bank or Police. It says there were initial concerns due to the nature of the payment. Mrs S was taken to one side by the branch manager and asked on three separate occasions whether she wanted him to call the Police. It says Mrs S remained calm throughout the questioning process. Santander says there was also supporting evidence to back up her claim that her car had been in an accident. The branch manager says that Mrs S wasn't acting suspiciously and didn't appear nervous; she was calm and composed, so he wasn't concerned about the payment.

When Mrs S reported the fraud to Santander, its complaint investigator noted that these days there would be *'know way of knowing what the cash was for'* and you would use a more secure form of payment to buy a car, and so she asked if Mrs S had been asked for any proof of the purchase such as documents from the seller or where she was buying the car from when she was in branch.

Mrs S said she wasn't asked these questions. Santander's notes don't show that these questions were asked in branch. Mrs S was also asked if the branch staff made it clear that if the withdrawal was made and it turned out to be a scam that she would lose these funds, Mrs S says this wasn't explained to her. She says she was told she could talk to the manager, but she felt she couldn't talk to him because she was dealing with Police.

*what we said*

One of our investigators looked into things. She upheld the complaint. In summary, she said, in all the prevailing circumstances, Santander had not done enough to detect and prevent the scam at the time Mrs S attended the branch.

She was persuaded the transaction was significantly out of character for Mrs S. She noted whilst Mrs S didn't demonstrate any vulnerabilities, her age was a factor due to the nature of these scams and how victims are targeted. She concluded that whilst this was finely balanced - and she could see that Santander had gone beyond the scam script to discuss the transactions with Mrs S – her view was that under the Banking Protocol Santander should have called the Police and this would've prevented the scam and Mrs S's losses.

Our investigator recommended that the complaint be upheld and Santander refund Mrs S the £8,500 plus interest at her account rate. She recommended £300 compensation for the distress and inconvenience caused.

Santander disagreed with these findings. It said, in summary:

- Mrs S had been effectively managing her account over the previous 12 months; writing cheques, making deposits, card payments, completing transfers, withdrawing cash and making foreign payments;
- Mrs S had a regular direct debit to the DVLA and made card payments to car retailers;
- having listened to the call in which the scam was reported, it feels Mrs S is astute and able to communicate effectively and has been able to provide a full account of the events;
- it didn't think that Mrs S' age meant she was vulnerable;
- Mrs S misled the branch staff and manager by saying the withdrawal was for a new car;
- Mrs S was taken to one side personally by the branch manager where he explained it was his job to protect her and her money and that he could phone the Police if she was being made to make the withdrawal or was in any danger;
- Mrs S provided some details about the car she said she was purchasing;
- Mrs S convinced staff she was not at risk;

- it interacts with customers based on trust, not distrust, so Santander doesn't agree it had cause for concern that Mrs S was at risk of financial harm;
- it followed her instructions and has an obligation to allow customers to access their funds and operate the account in accordance with the customer's mandate;
- the branch manager also has discretion to allow cash withdrawals over £5,000; and
- Mrs S was read a scam script

As the complaint couldn't be resolved informally, Santander requested that it be reviewed by an ombudsman, so it has been passed to me to make a final decision.

### **findings**

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

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 have been good industry practice at the time.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story:

- The law recognises that a bank may be liable to its customer if it makes a payment in circumstances where it has reasonable grounds (although not necessarily proof) for believing that the payment instruction was an attempt to misappropriate the funds of its customer (known as 'the Quincecare duty').
- Regulated firms like Santander are also required to conduct their '*business with due skill, care and diligence*' (FCA Principle for Businesses 2) and to '*pay due regard to the interests of its customers*' (Principle 6).

And as a matter of good industry practice at the time, I consider firms should also have taken proactive steps to:

- identify and assist vulnerable consumers and consumers in vulnerable circumstances, including those at risk of financial exploitation (something also recognised by the FCA in recent years and by the British Bankers Association's February 2016 report '*improving outcomes for customers in vulnerable circumstances*');
- look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam (something also recognised by the British Standards Institute's October 2017 '*Protecting Customers from Financial harm as a result of fraud or Financial abuse – Code of Practice*', which a

number of banks, including Santander, and trade associations were involved in the development of); and

- in relation to branch transactions like Mrs S' – follow the Banking Protocol when available.

This means that there are circumstances, irrespective of the payment channel used, where a bank should, in my opinion, fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

This is particularly so in light of the environment created by the increase in sophisticated fraud and scams in recent years - which banks are generally more familiar with than the average customer.

In this case, I need to decide whether Santander acted fairly and reasonably in its dealings with Mrs S when she withdrew £8,500 in cash, in branch, or whether it should have done more than it did.

Of particular relevance to this complaint is the Banking Protocol so I have set out more information about that below. But I note the BSI Code also contains similar recommendations to detect and prevent fraud.

### ***The Banking Protocol***

The Banking Protocol is a multi-agency initiative between the Police, financial sector organisations (including banks, building societies and the post office) and Trading Standards '*aimed at identifying customers who are in the process of being defrauded and implementing safeguarding procedures to prevent their repeat victimisation and further loss of funds*'. It has been fully in force since March 2018.

In broad terms, according to UK Finance's toolkit for financial businesses commit to:

- Look out for any unusual or out of character withdrawals and to implement the Banking Protocol procedure when such transactions are identified.
- Discreetly question the customer about the withdrawal or transaction and their reasons for making it, keeping in mind that the customer may have been told they are helping to catch a corrupt bank employee and may have been given a cover story to tell if asked about the transaction.
- Consider the responses against what they expect normal activity on the individual's account. If they are concerned or suspicious that the customer may be the victim of fraud, they should notify a senior member of staff, who should take the customer to a quiet area and ask further questions to establish more details.
- If the senior colleague believes the customer is the victim of fraud, either as a result of the answers provided or through their general behaviour, they should call the Police immediately who will attend the branch to speak to the customer.

And bank staff are encouraged to contact the Police even if they are not sure.

### ***Did Santander act fairly and reasonably in Mrs S's case?***

As I've explained, I consider that as a matter of good practice Santander should have been on the look-out for unusual and out of character transactions. I'm satisfied the request Mrs S made to withdraw such a large amount of cash was clearly out of character and unusual for her.

Mrs S normally withdraws £100 in cash from her local branch every couple of weeks. She uses her account to pay direct debits and issue cheques. Her account statements suggest she manages her account and maintains a healthy balance. I haven't seen any evidence of her withdrawing any more than £100 at a time. Mrs S's withdrawals were all made at her local branch which is consistent with the branch staff saying she is known to them.

Mrs S was 85 at the time and her age is a relevant factor here. Both the Banking Protocol and the BBA report on customers in vulnerable circumstances, acknowledge that elderly customers are more likely to be targeted by scammers because of their circumstances and trusting nature.

Considering all of this, I am satisfied there were several indicators that Mrs S could be at risk and Santander ought fairly and reasonably to have been alerted by Mrs S's request and taken steps to look into what was going on. Santander clearly also recognised this as it escalated the matter to the branch manager and took Mrs S to one side to ask more questions.

I'm mindful of the challenges faced by branch staff in the moment, when confronted with such situations, with only limited information on which to make decisions. I've considered the information the branch staff and manager had at the time Mrs S was in branch and Santander's account of what was discussed. I've also considered the steps Santander took when deciding if it did enough to detect and prevent Mrs S from potentially being scammed.

Having considered the representations from both sides about what happened I'm satisfied it's more likely than not that when Mrs S was in branch making the request to withdraw funds, Santander took the following steps:

- the branch staff read her a 'scam script' which included a warning (amongst several others) that the Police would never ask someone to withdraw money for the purposes of an investigation or fraud, although in my view the wording is not particularly clear;
- despite her response to the scam script, the branch staff had concerns about Mrs S's request and so the branch manager took her to one side to ask more questions about the payment and Mrs S explained she intended to use the money to buy a car in cash;
- the branch manager did – as Santander says – offer to call the Police if Mrs S felt she was in any danger and established that she would not be going to buy the car alone – although it does not appear the branch manager established who she would be going with; and
- the branch manager walked Mrs S to her car after making the withdrawal although I think that was primarily because she was carrying a large amount of cash.

As I've explained, I think it is more likely than not that Santander read Mrs S the scam script warnings. But it does not appear the scam script had an impact on her, and I do not think this means that Mrs S acted unreasonably or that Santander did enough. The Banking Protocol recognises that:

- often the bank will have to ask more detailed and specific questions to determine whether the customer might be a victim of fraud; and
- that customers are often convinced by the fraudster's story and so ultimately it may be necessary escalate the matter to the Police for customers to realise or accept that they are the victim of fraud.

I'm satisfied that in this case the branch staff realised it was appropriate to do more than simply read out a scam script. And it's clear that the branch staff and manager did ask further questions. But having considered all the evidence in this case, I'm not persuaded it's more likely than not that the branch staff asked sufficient probing questions.

I note that when Mrs S spoke to Santander after making her complaint, the Santander case handler asked if two further questions were asked in branch. These were: if she had any proof of the car purchase and who she was buying the car from. Mrs S says she was not asked these questions, whilst Santander's own evidence does not suggest that they were. And on balance, I think it's unlikely that they were.

Whilst I can't say for certain whether these additional questions or others, for example; further information about the make and model of the car and exactly what she was buying, if asked, would have made a difference, from Mrs S's recollections it seems unlikely she would have had an answer for them.

It seems to me that these would have been sensible and relevant questions to ask in the circumstances in order to understand more about the nature of the payment. And I think if Mrs S hadn't been able to answer them convincingly, it's likely this would have increased the branch managers concern and suspicion.

Overall, I think Santander should fairly and reasonably have asked more questions before completing the transaction. And if they had it's more likely than not that this would have led to the payment being stopped (whether by the branch manager or the Police).

It's also possible that a more detailed and bespoke conversation around the types of scams covered in the Santander script might have put some doubt in Mrs S's mind or helped the branch manager to form a more informed view about what was likely to be happening.

The branch manager says that when they spoke to Mrs S, she appeared to be calm. Miss A has told us, in contrast, that Mrs S was frightened, although I've taken into account the fact Miss A wasn't present at the time.

I agree that the customer's behaviour and demeanour are things branch staff should reasonably be mindful of. But even if Mrs S did appear to be outwardly calm, I've thought about whether the branch staff should never-the-less reasonably have remained suspicious or concerned in all the circumstances as they understood them to be after asking the additional questions they did (ignoring for the moment that I've found they should have asked more).

This is a well-known scam and the Banking Protocol provides for this exact scenario as one to be alert to – where consumers are told they are working with the Police to catch criminals in their branch. Branch staff are also warned that consumers are given or told to have a cover story if they are challenged about the reasons for the withdrawal. Often a consumer will say one thing, but the circumstances might indicate another. Here:

- Mrs S was 85 years old;
- she was asking for a considerable amount of cash;
- she said she was using the cash (£8,500) to buy a car – as the Policeman has pointed out (and Santander's complaint investigator also noted), that ought to have raised questions in itself;
- the payment was significantly out of character and unusual for her; and
- she was adamant she wanted the cash that day – indicating her situation was time sensitive.

Notwithstanding Mrs S's explanation for the withdrawal and the other steps Santander took, given the above circumstances, I think this combination of circumstances should fairly and reasonably have left the Santander branch staff with some doubts about the purpose of the large cash withdrawal.

I think based on the information they had about the circumstances of the transaction, the branch staff should reasonably have concluded that there remained a possibility that the Mrs S might be at risk of fraud and financial harm (even if ultimately that proved not to be the case).

Given that risk, I think Santander should fairly and reasonably have contacted the Police as a precautionary step in these circumstances.

I am also persuaded that it is more likely than not if Santander had called the Police, Mrs S would not ultimately have made the withdrawal she did, and the loss Mrs S suffered would've been avoided. Mrs S believed she was working with the Police to prevent a crime. I find it likely Mrs S would've explained what had happened and the scam quickly exposed if faced with being questioned by Police in person.

Overall, I'm satisfied that Santander ought fairly and reasonably to have contacted the Police in all the circumstances and if it had done Mrs S would not have lost the £8,500, she did. And I'm satisfied Santander should compensate Mrs S for that.

In reaching my conclusions about what is fair and reasonable in this case, I've thought carefully about everything Santander has said.

I note Santander says that Mrs S 'misled' the branch staff. But I am satisfied Mrs S was carefully manipulated and coached by fraudsters to think she was helping the Police to prevent criminal activity and to stop someone from the bank from taking her own money. She was given a cover story to carry this out. This is a well-known feature of scams and the Banking Protocol highlights that bank staff ought to be vigilant in probing consumers and that they shouldn't necessarily accept what a consumer says at face value. And I don't think the fact Mrs S relayed the cover story she was given to Santander means that she should not be compensated.

I also note the branch manager asked Mrs S, on more than one occasion if she wanted them to call the Police – effectively passing the decision to Mrs S. The Banking Protocol highlights that customers are often coached and under pressure to make these withdrawals or transfers so under the Banking Protocol (and I think fairly and reasonably) the decision whether to call the police or not rests with the bank.

Mrs S told Santander during their investigation call, that when the branch manager said that they could call the Police if she was worried about anything: *'I was dying to tell him that I was dealing with the Police and of course I couldn't'*.

I don't think the fact Mr S did not accept the branch manager's invitation to call the Police means the branch manager could reasonably feel reassured in this case. And the fact the branch manager asked Mrs S three times if she wanted to call the police suggests they may well have remained concerned and suspicious notwithstanding the responses Mrs S gave. In those circumstances, I'm satisfied Santander should fairly and reasonably have called the Police.

### ***fair compensation***

I'm satisfied Santander should reimburse the £8,500 Mrs S lost as a consequence of the scam together with interest. Having considered Mrs S account history I think it's more likely than not that had she not withdrawn the money it would have remained in her 123 Santander account attracting interest at the account rate. So, interest should be calculated at the account rate.

Miss A has told us that Mrs S has been left shaken by the scam. The strain that this has caused her could've been prevented had Santander acted as it ought to have. So, for these reasons I think Santander should pay Mrs S £300 for the trouble and upset caused.

### **final decision**

As set out above I uphold Mrs S's complaint against Santander UK Plc. And in full and final settlement of the complaint, I require Santander to:

- refund Mrs S account with £8,500;
- pay interest on that amount at the respective account interest rates, from the date of the withdrawal to the date of settlement. If Santander deducts tax from the interest element of this award, it should provide Mrs S with the appropriate tax deduction certificate; and
- pay Mrs S £300 in compensation for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A on behalf of Mrs S to accept or reject my decision before 1 December 2019.

Sophia Smith  
**ombudsman**