

## **The complaint**

Mr and Mrs Q complain that Santander UK Plc (“Santander”) won’t refund a payment of £949 made from her account that she says she didn’t authorise.

## **What happened**

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Mrs Q fell victim to a scam in August 2022 after she was contacted by a third party (“the scammer”) claiming to be from Amazon. She was told that her account had been subject to fraud and had been used to purchase a mobile phone.

The scammer told Mrs Q that, in order to receive a refund, she would need to open an account with Wise, a regulated Electronic Money Institution. The scammer talked her through how to open an account, and a payment of £949 was made into it on 5 August 2022 from Mr and Mrs Q’s joint Santander account.

Mrs Q later realised she had been scammed and reported the transaction to Santander, as she said she didn’t authorise it. However, Santander thought the transaction was likely authorised by Mrs Q. It also said it wouldn’t be covered under the Contingent Reimbursement Model (CRM Code) as the payment was made to an account in Mrs Q’s own name. Unhappy with this, Mrs Q referred the matter to our service.

Our investigator didn’t uphold the complaint. She said the evidence showed that a One Time Passcode (OTP) had been sent to Mrs Q’s registered mobile phone to set up an Open Banking payment to be made to her Wise account, and that the payment was authenticated using her passcode. As the investigator couldn’t establish any point of compromise, she didn’t think it was likely that anyone else had made the payments, so concluded they must have been authorised by Mrs Q.

Mr and Mrs Q disagreed, so the matter has been escalated to me to determine.

## **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 and have decided not to uphold it, as I think the payments were most likely authorised by Mrs Q. I’ll explain why.

When considering what’s fair and reasonable, I am required to take into account relevant law and regulations; the regulator’s rules, guidance and standards, the codes of practice; and, where relevant, what I consider to have been good industry practice at the relevant time.

The disputed transaction complained about took place in August 2022, so of particular relevance to my decision are the Payment Services Regulations 2017 (PSRs) – which apply to payments like the one made from Mr and Mrs Q’s account.

The PSRs say that a payment transaction is authorised by the payer where they have given their consent to the execution to the payment transaction. Such consent must be given in the form and in accordance with the procedure agreed between the payer and the payment service provider.

Unless the payment service provider can show consent has been given, it has no authority to make a payment or debit the customer's account. Where a payment service user denies having authorised a payment transaction, it is for the payment service provider to prove that the payment transactions in question were authorised by the customer.

Having considered the facts before me as well as the relevant law, it seems to me that the key question I need to determine here is whether it is more likely than not that Mrs Q authorised the transactions. In other words, I need to decide whether Mrs Q made the transactions herself or gave someone permission to do so. This is important because a customer will usually be liable for payments they've authorised and, generally speaking, a bank will be liable for any unauthorised payments.

In this instance, Santander has provided evidence to demonstrate that a One Time Passcode was sent to Mrs Q's mobile phone in order to complete an open banking payment, which I can see was sent to the same phone number she has provided to this service. The payment was then authorised using her passcode via the mobile app.

Mrs Q said that the scammer seemed to take over her phone. However, she has also maintained that she didn't download any remote access software, so it doesn't seem this would be possible. A third party cannot take control of a device simply by calling it. She also hasn't said that she disclosed any of her security details or One Time Passcodes to the scammer, so it's unclear how an unauthorised third party would have been able to authorise the payment using her credentials.

So, there's seemingly no other explanation for how the payments came to be made, other than them being made by Mrs Q. I accept it's possible she may not recall doing this at the time if she was under pressure from the scammers to try and get the money back she was told she'd lost. But given no one else had access to Mrs Q's device or security information, there is seemingly no point of compromise for the payments to have been made by anyone else.

Therefore, the only plausible conclusion is that either Mrs Q set up the payment, or she gave her details/device to somebody else, thereby giving her consent and authority for payments to be made on her behalf. I appreciate that Mrs Q disputes this but given no one else had access to her details or device, there is no other plausible explanation for how the payment could have otherwise been made.

As a result, I don't think Santander has acted unfairly by failing to treat the payment as unauthorised. I do not doubt that Mrs Q has been scammed in these circumstances though and may have unwittingly made the payment at the scammer's instruction, so I've considered whether Santander ought reasonably to have intervened at any point based on the transaction appearing suspicious or out of character. However, the payment wasn't for a significant amount, so I don't think it ought to have appeared suspicious to Santander either. Therefore, I don't think the bank has acted unfairly by failing to make further enquiries with Mr and Mrs Q before allowing the payment to be processed.

Santander is also under no obligation to refund the money to Mr and Mrs Q under the Contingent Reimbursement Model (CRM Code) either, as the Code does not apply to payments which the payer has made to themselves (which would have been the case here given the payment was made to Mrs Q account she'd opened with Wise). There would've

also been no prospect of Santander being able to recover the money either given it was swiftly paid out of Mrs Q's Wise account and on to the scammer.

Overall, I'm not persuaded Santander has acted unfairly in these circumstances, so I won't be asking it to take any further action.

### **My final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs Q to accept or reject my decision before 2 January 2024.

Jack Ferris  
**Ombudsman**