

The complaint

Mr L complains that Santander UK Plc ('Santander') won't refund the money he lost when he was the victim of a scam.

What happened

Mr L says that on 31 May 2023 he was the victim of an impersonation scam. Mr L received calls and messages from his credit card provider about suspicious activity on his account and was told that the account he made payments from was at risk. He was advised that the caller would get in touch with Santander's fraud team, and he'd receive a call from them.

Mr L then received a call from a spoofed number from Santander's fraud team who confirmed his account had been compromised. As a result, he needed to move all his funds to another account as a temporary measure while a new account was created.

Mr L made two payments totalling £2,580 (£1,280 and £1,300) from his Santander student account to an existing account held with an electronic money institution (EMI). The scammer then persuaded Mr L to transfer funds to what he was led to believe was a 'safe' account with Santander. Mr L says that he transferred £4,000 from his EMI account to the account details provided to him. Sadly, the final account Mr L transferred his funds to was controlled by scammers.

The scammer asked Mr L to transfer further funds from an ISA account. He was concerned about this and called Santander to discuss it. During the call Santander advised Mr L that he was the victim of a scam and to contact the EMI he transferred his funds to.

Santander didn't agree to reimburse Mr L's loss but said that its advisor should have raised a scam claim when Mr L reported the scam or when he subsequently called but had failed to do so. In recognition of this, Santander credited Mr L's account with £75.

Mr L was unhappy with Santander's response and brought a complaint to this service. He said Santander had allowed him to transfer his entire balance plus a £1,500 overdraft facility he had never previously used without providing an adequate warning or intervening. Mr L also said Santander hasn't properly considered his claim under the CRM Code it has signed up to.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said that the payments aren't covered by the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) as they were to an account in Mr L's own name and that she wouldn't have expected Santander to have intervened when they were made.

Mr L didn't accept the investigator's findings and asked for a final decision, so the complaint has been passed to me to consider. I have summarised his main points below:

- Although two firms are involved the circumstances need to be considered in the round as a complex and cruel scam which resulted in an overall loss of around £4,000. This has left him in debt when all he was trying to do was protect his money.
- Santander allowed all his funds, including his overdraft, to be transferred out of his account in unusual circumstances and made no effort to intervene or provide a

sufficiently clear warning. This was a substantial amount, and he would not normally make a transfer in stages as he did.

- He doesn't remember being given a warning or being asked why he was withdrawing his entire balance and overdraft.
- Funds left his account in a short timeframe. Had he made the transfers in branch questions would have been asked and the scam uncovered so he's in effect being penalised for using Santander's app.
- The fact the CRM Code doesn't cover this situation leaves customers like him vulnerable.
- If Santander had stopped the payment the loss from his EMI account would have been prevented.

Santander also provided some points for me to consider in my decision. I've summarised them below:

- Mr L transferred funds to an EMI account in his own name that he had made previous transfers to and had full access to and control of. Mr L should pursue this EMI.
- The payments Mr L made weren't unusual and so didn't trigger its fraud detection systems.
- Santander acted correctly and in accordance with a recent judgement.

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.

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 be good industry practice at the time.

I appreciate that Mr L has lost funds and the impact this has had on him, but I can only ask Santander to reimburse him if I think it did something wrong when the payment requests were made.

CRM Code doesn't apply in this case because it only applies to certain payments to another person and Mr L transferred funds to his own accounts.

In broad terms, the starting position in law is that Santander is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. It's not disputed that Mr L made and authorised these payments, although I accept that when he did so he didn't think his funds were at risk.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This

is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr L when he authorised payments from his account or whether it could and should have done more before processing them.

I'm sorry to disappoint Mr L, but I don't consider Santander ought reasonably to have recognised he was at risk of financial harm and taken any further action. Mr L was making relatively low value transactions to an account in his own name that he had previously transferred funds to. Shortly before the scam transaction Mr L made the following transfers to his account with the same EMI:

24/02/23 - £1,000

24/04/23 - £750

27/05/23 - £1,000

In the circumstances, I'm not persuaded that the payments of £1,280 and £1,300 would have stood out as so unusual that Santander needed to intervene. I appreciate that the second transaction took Mr L close to his overdraft limit of £1,500, but this limit had been in place for some time and Mr L had used his overdraft briefly in January 2023 and then again in April 2023. So, I don't think there was enough going on to conclude that Santander acted unreasonably in following Mr L's payment instructions. There's a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. Whilst banks have obligations to act in their customers' best interests, they can't reasonably be involved in every transaction.

I understand Mr L's concerns that the CRM Code doesn't apply in this case, but this isn't something I can consider here. My role is to look at the individual circumstances of Mr L's complaint and decide if Santander treated him fairly based on law, rules, guidance and good practice at the time.

Overall, whilst I'm sympathetic to the position Mr L finds himself in, I can't reasonably ask Santander to reimburse his loss.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 26 December 2023.

Jay Hadfield
Ombudsman