

## The complaint

Mrs A complains that Santander UK Plc (“Santander”) won’t refund £5,834.40 she lost to a scam and doesn’t think Santander did enough to protect her.

## What happened

Mrs A fell victim to a task-based employment scam in October 2022. She was contacted via WhatsApp by someone purporting to be from a well-known employment agency (“the scammer”), who offered her a job where she could work remotely. The scammer told her she would be paid in cryptocurrency for completing tasks online, which involved her purchasing items through a trading platform, upon which she would also receive commission. Mrs A was told that the idea behind this was that the more an item is purchased, the higher up the listings it would rise to help boost future sales.

The scammer set Mrs A up with a trading account, which it told her had been pre-paid in order for her to complete purchases. She went through some training and set up a cryptocurrency account with a legitimate platform “O” at the scammer’s instruction. Mrs A was told that she would need to temporarily top up her trading account with her own money whenever it fell into deficit following a purchase, which she could do by sending cryptocurrency via O. She was told that she would get her money back along with commission when she was paid after completing a total of 40 tasks.

Mrs A was later instructed to open an account with, and transfer her money to, an FCA- authorised Electronic Money Institution (“EMI”) – “W”. She was told by the scammer that traders offering the best exchange rates would only accept payments through this EMI. So she opened an account with it on 30 October 2022 and was shown how to purchase cryptocurrency using the peer to peer (“P2P”) network, as she was told this was a better way to buy it.

The purchases Mrs A was having to make as part of her job became increasingly expensive, which led to her having to make several “top up” payments to her accounts with O and W, which she paid using her Santander debit card:

Payment	Date	Payee	Payment type	Amount
1	27/10/2022	O	Debit card	£32.53
2	29/10/2022	O	Debit card	£100.96
3	30/10/2022	O	Debit card	£131.26
4	30/10/2022	O	Debit card	£302.90
5	30/10/2022	W	Debit card	£5.00
6	01/11/2022	W	Debit card	£551.65

7	01/11/2022	W	Debit card	£802.40
8	01/11/2022	W	Debit card	£3,309.90
9	01/11/2022	W	Debit card	£601.80
		<b>Total:</b>		<b>£5,834.40</b>

From her account with O, Mrs A sent the cryptocurrency she had purchased to the scammer, under the impression that she was topping up her trading account. From her account with W, Mrs A purchased P2P cryptocurrency through Binance, where it was also subsequently transferred on to the scammer.

Mrs A eventually told the scammer that she wasn't able to afford any more purchases to complete her tasks, at which point they stopped contacting her and she realised she had been scammed.

Mrs A reported the fraud to Santander, where it attempted to recover the debit card payments by raising a chargeback claim. It said that the claim was accepted for the payment of £131.26. However, the rest were successfully defended by the merchants and Santander didn't pursue the chargeback claim any further. It also declined to refund any of the payments Mrs A had lost to the scam as it said she had authorised them.

Mrs A complained that Santander had not acted fairly. She said the bank could have prevented her loss if it had been monitoring her account for unusual activity and intervened to question her about the payments she was making. Mrs A felt that Santander should have warned her and was therefore liable for her loss. She also said it had also mishandled her fraud claim and provided poor service.

Santander apologised for its poor handling of Mrs A's fraud claim and offered £250 compensation for the distress and inconvenience caused. But it maintained its stance that it wasn't liable for the money she lost to the scam as there had been no bank error, so Mrs A referred the matter to this service.

Our investigator upheld Mrs A's complaint. She thought that Santander ought to have flagged the £3,309.90 payment made on 1 November 2022 as suspicious given that multiple card payments were being made in quick succession to the same payee, which can often indicate a risk of financial harm. The investigator thought that Santander could have prevented any further loss if it had questioned Mrs A about the payment, as it would have likely realised she was falling victim to a scam, so she said that it should refund the money Mrs A lost from this point onwards.

The Investigator didn't think that there should be any deduction from the amount awarded to Mrs A as she didn't think there was any reason for her to believe she was being scammed. In terms of the poor service Santander had provided Mrs A, she thought that its offer of £250 compensation was fair in all the circumstances.

Mrs A accepted the investigator's opinion, but Santander disagreed. In summary, it said:

- It has acted in line with industry standards by following Mrs A's instructions to transfer money, which was paid into an account in her own name, over which she had full access and control. It did not breach any duty of care owed to Mrs A.
- The recent Supreme Court judgement in the case of *Philipp vs Barclays Bank Plc UK*

[2023] UKSC 25 confirmed that where a bank receives a payment instruction from a customer which is clear and leaves no room for interpretation and the customer's account is in credit, the bank's primary duty is to execute the payment instruction. This is a strict duty, and the bank must carry out the instruction promptly without concerning itself with the *'wisdom or risks of the customer's payment decisions'*.

- Mrs A's account was in credit and there is no dispute that she authorised the transactions. The payment instructions were clear and without room for interpretation. There was no reason for it to be concerned about the payments.
- In any event, the point of loss did not occur from her Santander account; it occurred from her account with W, which is a regulated firm in its own right. She should therefore be pursuing her claim against W instead of Santander.
- Neither of the payments would have appeared unusual as Mrs A was using her debit card from a regular IP address in order to send funds to a money service provider she had paid before. In any event, it cannot be predicted how any conversation with Mrs A would have gone if it had spoken to her about the payment. The questions asked would be proportionate to the situation and responses received from the customer, and there wouldn't have been enough here to reasonably detect that Mrs A was at risk of financial harm.
- If it is to be held liable for any of the payments made as part of the scam, Mrs A should also be held jointly liable due to her own contributory negligence.

In addition to the specific points above, Santander has shared some broader concerns about its liability for payments of this nature. I've summarised those arguments below:

- There was no legal duty on it to protect customers from financial harm from fraud.
- Neither do any of the rules, standards and guidance issued by the Financial Conduct Authority place such a duty on it.
- It does not accept that the British Standards Institute PAS 17271 ("the BSI Code"<sup>1</sup>) places any duty on it either.
- The CRM Code now represents good industry practice, including the obligation to provide warnings and, where appropriate, intervene when it identifies a scam risk. But the CRM Code does not extend to these types of payment, and neither will the forthcoming mandatory reimbursement scheme the Payment Systems Regulator ("the PSR") is currently consulting on.
- So, asking it to reimburse payments that fall outside of those schemes goes beyond what could be considered good industry practice and regulatory expectations.

As Santander didn't agree, the matter was escalated to me to determine.

I issued my provisional decision on this complaint in December 2023. I said I was minded to uphold hold it in part and set out the following reasoning:

*In deciding what's fair and reasonable, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where*

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<sup>1</sup> British Standards Institute's *'Protecting Customers from Financial harm as a result of fraud and financial abuse – Code of Practice'*

*appropriate, what I consider to have been good industry practice at the time.*

*Having done so, I'm currently minded to uphold it, but I have reached a different provisional conclusion to the investigator about what Santander should do to put things right. For the reasons I will go on to explain, I'm minded to conclude that Santander ought reasonably to have made further enquiries prior to the processing the £3,309.90 payment made on 1 November 2022 and, if it had done so, the scam would have come to light and any further losses would have been prevented. However, I am also satisfied that Mrs A should bear joint responsibility (50%) for the losses she suffered from the time of the £3,309.90 payment.*

*The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mrs A's account is that she is responsible for payments she's authorised herself. And, as the Supreme Court has recently reiterated in Philipp v Barclays Bank UK PLC, banks generally have a contractual duty to make payments in compliance with the customer's instructions.*

*In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:*

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.*
- The express terms of the current account contract may modify or alter that position. For example, in Philipp, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.*

*In this case, Santander's June 2022 terms and conditions gave it rights (but not obligations) to:*

- 1. Refuse any payment instruction if it reasonably suspects it relates to fraud or any other criminal act.*
- 2. Delay payments while fraud prevention checks take place and explained that it might need to contact the account holder if Santander suspects that a payment is fraudulent. It said contact could be by phone.*

*So, the starting position at law was that:*

- Santander was under an implied duty at law to make payments promptly.*
- It had a contractual right not to make payments where it suspected fraud.*
- It had a contractual right to delay payments to make enquiries where it suspected fraud.*
- It could therefore refuse payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things.*

*Whilst the current account terms did not oblige Santander to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments*

*promptly) precluded Santander from making fraud checks before making a payment.*

*And, whilst Santander was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations, requirements and what I consider to have been good practice at the time, it should fairly and reasonably have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Santander, do.*

*I am mindful in reaching my conclusions about what Santander ought fairly and reasonably to have done that:*

- FCA regulated banks are 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)<sup>2</sup>.*
- Banks have a longstanding regulatory duty “to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime” (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001).*
- Over the years, the FSA, and its successor the FCA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime, including various iterations of the “Financial crime: a guide for firms”.<sup>3</sup>*
- Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).*
- The October 2017, BSI Code, which a number of banks and trade associations were involved in the development of, recommended firms 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. Not all firms signed the BSI Code, but in my*

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<sup>2</sup> Since 31 July 2023 under the FCA’s new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

<sup>3</sup> For example, both the FSA’s Financial Crime Guide at 4.2.5G and the FCA’s 2015 “Financial crime: a guide for firms” gave examples of good practice in relation to investment fraud saying:

*“A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could cover losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are informed by this assessment.*

*A bank contacts customers if it suspects a payment is being made to an investment fraudster.*

*A bank has transaction monitoring rules designed to detect specific types of investment fraud. Investment fraud subject matter experts help set these rules.”*

*view the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now.*

- *Santander is also a signatory of the CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers. The CRM Code does not cover debit card payments, but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers processing debit card transactions.*

*Overall, taking into account the law, regulators 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, or provided additional warnings, before processing a payment – as in practice all banks do.*
- *Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.*

*Should Santander have fairly and reasonably made further enquiries before it processed Mrs A's payments?*

*It isn't in dispute that Mrs A has fallen victim to a cruel scam here, nor that she authorised the disputed payments she made to her O and W accounts (where her funds were subsequently transferred to the scammer). The payments were made by debit card using her legitimate security credentials provided by Santander, but I've thought about whether the bank should have reasonably intervened in any of these payments.*

*Whilst I have set out in detail in this provisional decision the circumstances which led Mrs A to make the payments from her Santander debit card, and the process by which that money ultimately fell into the hands of the fraudster, I am mindful that Santander had much less information available to it upon which to assess whether any of the payments presented an increased risk that Mrs A might be the victim of a scam.*

*So, I have considered the steps Santander ought fairly and reasonably to have taken into account with only the more limited information it had.*

*Having considered the first seven payments made as part of the scam, in light of Mrs A's previous account history, I don't think there was anything particularly unusual or suspicious*

*that ought to have concerned Santander at that point.*

*I appreciate that some of the payments were being made to a crypto platform and an EMI (which are reporting increasing instances of customers being scammed, including as a consequence of multi-stage scams often involving cryptocurrency). But the value and frequency of the first seven payments would not, in my opinion, have appeared particularly out of character. They were not for significant amounts, and Mrs A had sufficient funds in her account to make these payments.*

*However, I am satisfied Santander should have made further enquiries when Mrs A came to make the £3,309.90 payment to W on 1 November 2022 before it was processed. I say this because, by that point, it was the third payment being made to the same payee (W) in the space of less than ten hours, in a series of payments that were increasingly escalating in value. Santander will be aware that multiple escalating payments being made in quick succession can often be indicative of financial harm.*

*The amount being sent to W by this point was also out of character for the typical sort of spending associated with Mrs A's account. By the time she was making the payment of £3,309.90, she would have cumulatively paid over £4,600 in one day. However, Mrs A's account statements show that she rarely makes payments for anything over and above £1,000, so this also ought to have been regarded as unusual.*

*I can also see from the card payment audit provided by Santander that when Mrs A first attempted to make the payment of £3,309.90 it was declined due to insufficient funds in her account. So, I am satisfied Santander ought to have identified from all the information available to it that there might be increased risk associated with the payment.*

*In my view this combination of circumstances ought fairly and reasonably to have led Santander to make additional enquiries before processing the payment to establish the circumstances in what had become a series of payments that were out of character. I appreciate that Mrs A had made payments to W in the past. But this was seemingly to another account unrelated to the scam, as W has confirmed that the account Mrs A paid on 1 November 2022 was an account in her own name, that had only been opened on 30 October 2022. And I don't think this would have made the payments she made on 1 November 2022 any less suspicious. They still involved an unusual amount of money being paid in a short period to an account with an EMI – a pattern of activity that could be consistent with certain types of scam, notwithstanding the payments were being made to an account in Mrs A's own name (which I note Santander wouldn't have known in this instance in any event).*

*In reaching my view that Santander ought fairly and reasonably to have made further enquiries, I consider Santander ought to have been mindful of the potential risk to Mrs A of 'multi-stage' fraud – whereby victims are instructed to move funds through one or more legitimate accounts held in the customer's own name to a fraudster. The use of and risks to consumers of multi-stage fraud were well known to banks in September 2022.*

*Whilst I am satisfied – and my provisional conclusion based on the evidence and arguments presented so far is that – Santander ought fairly and reasonably to have made enquiries before making the £3,309.90 payment, I recognise (as I have set out above) that there were features of the pattern of payments and events prior to the £3,309.90 payment which wouldn't have reasonably indicated a scam risk. Consequently, the question of whether Santander should fairly and reasonably have intervened before the £3,309.90 payment is not a straightforward one.*

*In contrast, when Mrs A made the next £601.80 payment to W, the possibility that there*

*might be a scam was significantly increased and that possibility should, in my view, have been very clear to Santander. By that stage, she was attempting a fourth payment to W in under 10 hours. Whilst there may have been legitimate reasons why Mrs A was making a series of card payments in a short period to an e-money account, I am satisfied Santander ought to have recognised the enhanced scam risk.*

*If Santander had made further enquiries before the £3,309.90 payment, would that have prevented the losses Mrs A incurred after that point?*

*Santander has said that it wouldn't be able to predict whether any conversation it could've had with Mrs A would've uncovered the scam, and that any questions would be proportionate to the situation and the responses received from the customer. To be clear, I'm not suggesting Mrs A should have been subject to an interrogation – merely, in the circumstances, a basic level of questioning designed to disturb or unearth a potential fraud and establish that Mrs A was not at risk of financial harm.*

*I've thought carefully about whether the kind of questions that I believe ought fairly and reasonably to have been asked by Santander would have made a difference. And on the balance of probabilities, I think they would have. If Santander had contacted Mrs A and asked her further questions and for more of the basic surrounding context of the payments she was making, I think it's likely she would have explained what she was doing. There's no indication that she had been coached by the scammer into misleading the bank, for example, so I think she would have likely explained that she had been given a job that required her to make various purchases as part of her employment, but that she had to use her own money to bring her trading account out of deficit after making any such purchases.*

*As I've set out above, Santander ought to have had a good understanding of how 'multi-stage' fraud commonly works. It could have enquired as to how Mrs A had found this job, and how she was going to be paid. It could've discovered that she had been contacted via WhatsApp by someone saying they were a recruiter, and that she was expecting to be paid in cryptocurrency but had to complete at least 40 tasks before she would be allowed to withdraw any earnings or commission. This, coupled with the fact that she was being asked to send multiple payments to her own EMI account to buy cryptocurrency from the P2P market before transferring it on again, ought reasonably to have alerted Santander that she was most likely being scammed. And rarely will any legitimate employer ask its employees to part with large sums of their own money as part of the job. So, I think it missed an opportunity here to uncover the scam and prevent any further losses.*

*Should Santander be fairly and reasonably held responsible for Mrs A's loss?*

*In reaching my decision about what is fair and reasonable, I have taken into account that Mrs A paid the money to an account in her own name, rather than directly to the fraudster, so she remained in control of her money after she made the payments from her Santander account, and it took further steps before the money was lost to the fraudsters.*

*But for the reasons I have set out above, I am satisfied that it would be fair to hold Santander responsible for Mrs A's losses (subject to a deduction for her own contribution). As I have explained, the potential for multi-stage scams ought to have been well known to Santander and, as a matter of good practice, Santander should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams. I'm satisfied Santander should fairly and reasonably have made further enquiries before the £3,309.90 payment and, if it had, it is more likely than not that the scam would have been exposed and Mrs A would not have lost any more money. In those circumstances I am satisfied it is fair to hold Santander responsible for Mrs A's loss.*



*I have also taken into account that the payments were made to a regulated business – W, and Mrs A might potentially have a claim against W in respect of its actions (although W is not a party to this complaint and so I make no finding about its role here).*

*Whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against two financial businesses about connected circumstances, Mrs A has not referred a complaint about W to me and DISP does not empower me to instruct Mrs A to make or refer a complaint to me about another business.*

*I am required to consider the complaint in front of me. I have found that Santander did not act fairly and reasonably in the circumstances of this case. And whilst it is a possibility that Mrs A may have cause to complain against W, I am not persuaded it would be fair to reduce the award solely for that reason. Mrs A is entitled to choose to complain only about Santander and I am satisfied that Santander could have prevented the losses she suffered if it had acted fairly and reasonably.*

*I have also taken into account Santander's comments about the PSR's proposed mandatory reimbursement scheme, which – as currently proposed – would not require it to reimburse Mrs A if this was an authorised push payment rather than a debit card payment. The PSR's proposals are not yet in force and are not relevant to my decision about what is fair and reasonable in this complaint. But I do not consider the fact that the PSR does not propose to make it compulsory for payment service providers to reimburse consumers who transfer money to an account in their own name as part of a multi-stage fraud, means that Santander should not compensate Mrs A in circumstances when it failed to act fairly and reasonably, as I have found was the case here.*

#### *Should Mrs A bear any responsibility for her losses?*

*Santander has referred to Mrs A's own contributory negligence, as it has said she ought to have known the job wasn't legitimate given she didn't receive any contract of employment and had been contacted by WhatsApp.*

*There is a general principle that consumers must take responsibility for their decisions, and I am mindful of the law relating to contributory negligence and the impact a finding of contributory negligence may have to reduce the damages recoverable by a claimant in court proceedings.*

*I have duly considered whether Mrs A should bear some responsibility by way of contributory negligence, and I'm currently minded to find that she should in the circumstances of this case. I say this because I consider there to have been several warning signs that she was being scammed, which Mrs A does not appear to have reasonably acknowledged or acted upon, including:*

- She didn't have a contract of employment with the company she was working for. I appreciate she was sent job application forms, but the fact that she didn't have a contract ought to have given her cause for concern, particularly when it started asking her to part with her own money. No legitimate employer would ask its employees to pay money in this way in order to receive their salary.*
- Mrs A was contacted by someone on WhatsApp claiming to be from a well-known recruitment company, saying they got her number from the company database. But the message was sent from an unknown mobile number and had poor spelling and grammar. It doesn't appear that she spoke to anyone in person, and none of the paperwork she received had anything referencing the recruitment agency.*

- *Mrs A said she researched the company online, and saw mixed reviews, with most being positive. However, it seems that she did see some negative reviews amongst these too, but doesn't appear to have taken any further course of action to satisfy herself that the employer was legitimate, such as calling the recruitment company on their genuine telephone number to check.*
- *Mrs A hasn't explained what she thought was happening with the goods she was supposedly buying as part of the scam, and whether these were meant to be received by her or by anyone else. What she was being asked to do as part of her job therefore should not have seemed plausible.*
- *Mrs A also said she was reassured at the beginning of the scam that she would not at any point have to pay money directly herself. However, very soon after she was told she would have to make 'top up' payments using her own money, in direct contradiction to what she had been told. By the time she came to make the payment of £3,309.90, I note that Mrs A said she had already begun to have doubts about what she was being asked to do at that stage, and was becoming concerned with the increasing value of payments she was being asked to make. But despite being aware of a potential risk, she continued to make the payments to the scammer.*

*Based on all of these factors, I'm satisfied Mrs A should reasonably have been concerned by the repeated and seemingly unexpected requests for her to make large payments as part of her job. But it doesn't appear that Mrs A made any enquiries into the legitimacy of her employment and what she was being asked to do.*

*So, I think Mrs A did have a role to play in what happened and I think that the amount Santander should pay to her in compensation should fairly and reasonably be reduced to reflect that role. Given how serious I think Mrs A's concerns about the legitimacy of the investment ought reasonably to have been, I think that a fair deduction is 50%.*

#### *Did Santander do enough to recover the funds?*

*I've also thought about whether Santander could have done more to recover the funds after Mrs A reported the fraud, as in some circumstances money spent on a debit card can be recovered via the bank raising a chargeback dispute. I can see that Santander did raise a chargeback with both O and W. One of the payments of £131.26 was even accepted and refunded, although it isn't clear on what grounds.*

*In terms of all the other payments, these were either successfully defended or Santander said it wasn't going to pursue a claim. And given Mrs A was either purchasing a crypto asset from a legitimate platform, or sending money to her own EMI account, there would have been very little prospect of a chargeback succeeding here. So, I don't think Santander has acted unreasonably by failing to pursue the chargeback claim any further.*

#### *Is Santander's offer of compensation fair for its poor handling of Mrs A's fraud claim?*

*Finally Mrs A has said she is unhappy with the way Santander handled her fraud claim. And I acknowledge that the experience would have been frustrating for her. She wasn't able to get through to anyone at first when she wanted to report the fraud, for example, and was then given conflicting information, amongst other things. So, I accept that Mrs A has had a poor experience in trying to get Santander to investigate and conclude its investigation into the payments she disputed.*

*Santander has acknowledged that its service could have been better and offered Mrs A £250 compensation in recognition of its poor handling. And overall, I'm satisfied this is fair*

*compensation for the level of distress and inconvenience caused to Mrs A, so I do not intend making any further award.*

### Conclusions

*Overall, having considered the matter carefully, I think Santander should refund 50% of the payments Mrs A made from the £3,309.90 payment on 1 November 2022 onwards. As I have set out above, in total there were two payments with a combined value of £3,911.70. So, Santander should pay Mrs A £1,955.85.*

*I think that Santander should also pay 8% simple interest per annum on that amount from the date of each payment to the date of settlement.*

*If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs A how much it's taken off. It should also give Mrs A a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

I invited further comments and evidence from both parties. Mrs A accepted my provisional decision, but Santander disagreed. In summary, it said:

- Proper consideration of regulatory expectations and requirements, as well as good industry practice, should not result in a conclusion that it is fair and reasonable to hold it responsible for Mrs A's loss.
- While it acknowledges the application of PRIN it must also take into account its legal obligations to Mrs A and the rules in the FCA handbook.
- SYSC 3.2.6R and other AML requirements all relate to the risk of Mrs A using her account to launder funds, rather than forming the basis of a requirement to protect her from the risk of fraud.
- SYSC 3.2.6R is also qualified by reasonableness and there is no expectation that it should or could identify and prevent every payment that carries risk of being associated with a scam.
- My provisional decision fails to take into account:
  - a) The need to strike a balance between taking reasonable measures to detect fraud and its legal obligations under the PSR 2017 and common law.
  - b) The payments in question were debit card payments that were 'pull' payments where the protocol of the transaction is managed by the merchant. The features of this payment methodology, which differ from faster payments, has not been factored into whether it is fair and reasonable for Santander to reimburse the payments.
  - c) Its fraud detection systems have to be carefully calibrated to ensure that legitimate card payments are not interrupted to a disproportionate degree, taking into account the number of payments it processes to trusted beneficiaries such as W.
  - d) The fact that some of the payments went to another FCA authorised firm is key to deciding what is fair and reasonable in this case. W is subject to the same FCA principles, AML requirements and good industry practice as Santander is.
- There are 'genuine differences' between the position of a card issuer whose

customer is using their debit card to make payments to their own account and a firm sending money directly to a fraudster. It processes very significant volumes of card payments to W, of which only a very small proportion have turned out to be fraudulent. And, while it does have detection strategies in place for card payments to prevent this kind of fraud, it must have regard for the level of risk this kind of payment presents.

- While Santander accepts that multi-stage fraud of this nature is on the rise, it can't be expected to detect this kind of fraud to the degree suggested in my provisional decision.
- W had far more information on which to base a risk assessment of the payments than it did, so it was far better placed to meaningfully intervene in the transactions.
- It again reiterates that both the CRM and upcoming PSR scheme have consciously excluded payments of this nature and, it feels, a customer would have no legal basis on which to recover funds from it. It argues that the exclusion of this type of payment from both schemes is relevant and should be taken into account, particularly as the PSR scheme was an opportunity for both the government and Payment Systems Regulator to extend protections to this type of fraud, if they felt it was the right thing to do.
- It's unclear why I haven't exercised my discretion under DISP 3.5.2 to inform Mrs A that it might be appropriate to complain against W.
- If I decide that the complaint should be upheld, despite its further submissions, it agrees that there should be a deduction to the amount Mrs A is reimbursed to take into account her role in what happened. It made some additional points to support this view and argues that there should be a deduction of at least 50%.
- The interest award I recommended does not reflect available interest rates at the time of the scam or the position taken by the courts in relation to interest. The award represents a windfall to Mrs A. While it accepts that she might have used the money in a variety of ways, she would not have been able to obtain the recommended interest rate through any standard savings product.

### **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.

I would like to assure Santander that I have carefully read and considered all of its further submissions, but they don't persuade me to reach a different conclusion.

I've already set out in detail in my provisional decision why I thought Santander should, fairly and reasonably, be responsible for Mrs A's loss. So, I don't feel the need to respond to the majority of points Santander has raised in its response, as I have little to add to what I've already said. I will, however, address some of its points further in order to clarify certain aspects of my decision.

First, Santander submits that the features of card payments have not been factored into my decision. I'm aware of the differences between authorised push payments and debit card payments –with the latter being 'pull' rather than 'push' payments – and I can assure Santander that I've taken the particular nuances of card payments into account when reaching my decision on what is fair and reasonable.

I'm also aware that a payment service provider cannot 'pause' a card payment in the same way it can a push payment. But that does not mean that Santander cannot prevent potentially fraudulent card payments from being made, as there is nothing preventing the bank from *stopping* the card payment altogether if it suspects fraud, which in practice all banks, including Santander, do. Indeed, Santander has said itself that it does have detection strategies in place for card payments that represent a fraud risk. So, the fact that the payments in question were made by debit card doesn't change my opinion in terms of what Santander could fairly and reasonably have been expected to do when it suspects a card payment might be related to fraud or a scam.

In my provisional decision, I also acknowledged the fact that the payments were going to an account in Mrs A's own name with another FCA regulated firm. But I explained that, having carefully weighed up the risk the payments presented against the knowledge (and lack of knowledge about the eventual destination of the funds) that Santander had, that it should have reasonably made further enquiries prior to allowing the £3,309.90 payment to be made. I did not suggest that Santander could or should detect and prevent every fraudulent card payment, and I acknowledge the balance it needs to strike between preventing fraud and not unduly inconveniencing customers.

I've already explained why in this case, fairly and reasonably (and taking into account that neither the CRM Code nor the PSR's mandatory reimbursement scheme as currently proposed would cover card payments such as these), I'm not persuaded Santander got that balance right. And I don't have anything further to add to this.

Santander has also questioned why I haven't exercised my discretion under DISP 3.5.2 to inform Mrs A that it might be appropriate to complain against W as well or instead of Santander. However, DISP 3.5.2, only gives me the powers to inform Mrs A it might be appropriate to complain against another respondent (and I suspect she's well aware that she could complain about W). It does not compel me to do this and it certainly doesn't allow me to compel Mrs A to refer a complaint about W instead of, or as well as, her complaint against Santander.

Finally, I've taken Santander's point about the appropriate rate of interest to be awarded into consideration. And while I accept that Mrs A may not have been able to obtain a savings account with a similar rate of interest at the point the payments were made, my interest award takes into account the overall impact of being deprived of those funds and that she may have utilised the funds in a variety of ways if it had remained available for her to use.

Overall, for the reasons I've explained, and having taken everything Santander has said into consideration, I see no reason to depart from the provisional conclusions set out above.

### **My final decision**

For the reasons given above, I uphold this complaint in part and instruct Santander UK Plc to pay Mrs A:

- 50% of the final two payments completed on 1 November 2022 – a total of £1,955.85
- 8% simple interest per year on each payment from the date of each payment to the date of settlement
- Pay £250 compensation (if it hasn't done so already) in recognition of the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or

reject my decision before 5 February 2024.

Jack Ferris  
**Ombudsman**