

The complaint

Mrs P complains that Santander UK Plc (“Santander”) won’t refund £1,411.44 she lost to a bank impersonation scam.

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 P fell victim to a scam on 17 August 2022 after she received a text message claiming to be from the NHS about Covid-19 tests. Mrs P recalls clicking the link and entering her details. She then later received a call from a scammer claiming to be from her bank, Santander.

The scammer told Mrs P that two transactions had been made on her account, which Mrs P said she didn’t recognise, and she said the call was ended. Mrs P later discovered that two transactions had been made from her account that day, totalling £1,411.44. She reported this to Santander saying she didn’t authorise these transactions.

Santander considered Mrs P’s claim but declined to refund the payments as it said they had been made from her registered device and even confirmed by a text message sent to her phone. Unhappy with this, Mrs P referred her complaint to this service.

Our investigator didn’t uphold the complaint. They also thought that Mrs P had likely authorised the transactions and didn’t think Santander had acted unfairly by refusing to refund the payments. Mrs P 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 for the following reasons:

- I appreciate that Mrs P doesn’t recall authorising the two payments made on 17 August 2022. However, Santander has provided evidence to show that the payments were made from Mrs P’s device and regular IP address. A text message was also sent to her phone about one of the payments asking her to confirm it was genuine, to which a response was received confirming it was.
- Mrs P told Santander that no one else had access to her online banking or mobile phone, and neither does she recall being asked to download anything. As a result, there doesn’t appear to be a plausible explanation for how anyone else could have authorised the transactions from her device. Therefore, while I accept Mrs P may not recall doing so, I consider it more likely than not that she authorised the transactions herself or gave her security details/device to somebody else, thereby giving her consent and authority for payments to be made on her behalf, as there is seemingly no other point of

compromise for the payments to have been made by an unauthorised third party.

- 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 P has been scammed in these circumstances though and may have unwittingly made the payment at the scammer's instruction. And given Santander is a signatory to the Contingent Reimbursement Model (CRM Code), it should have considered whether she was eligible for a refund under the Code given the transactions are being treated as authorised push payments (APP).
- But while Santander may have failed to assess the payments under the CRM Code, I don't consider it has acted unfairly by failing to provide a refund in this instance given the lack of information available. Mrs P cannot provide a plausible explanation for how or why the money was transferred from her account, for example, so it wouldn't be possible to determine whether or not she had a reasonable basis for believing the payments to be genuine.
- I also don't consider Santander would have been obliged to provide an Effective Warning under the Code either, as the payments were not of a significant value, and I don't think Santander ought to have considered them as posing an APP scam risk. In any event, even if Santander should have given an Effective Warning, it's not possible to say whether such a warning would have been material in preventing the scam, given we do not know all the details of how it unfolded.
- As a result, Mrs P wouldn't qualify for a refund under the CRM Code in these circumstances. I also don't consider there was any cause for Santander to make further enquiries into the disputed payments outside of the Code either, given they wouldn't have appeared particularly unusual or out of character when compared with Mrs P's previous spending history.
- I can also see that Santander attempted to recover the funds from the beneficiary account when the scam was reported, but it doesn't appear they received a response from the receiving bank. So, I don't think there was anything more it could have done to try and recover the money in these circumstances either.

I appreciate this will likely come as a disappointment to Mrs P, and I'm sorry to hear she has been the victim of a cruel scam. However, I'm not persuaded Santander has acted unfairly, 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 Mrs P to accept or reject my decision before 2 January 2024.

Jack Ferris
Ombudsman