

The complaint

A limited company, which I'll refer to as 'O', is unhappy with the actions of Santander UK Plc surrounding a payment it instructed which is now understood to have been a scam.

What happened

On 13 April 2022, O called Santander to make a payment to a company ("the Company") with which O had an ongoing business relationship and to which O had made several payments previously.

O had received an invoice from the Company which explained that the Company's bank account details had changed such that this and future payments should be made by O to the new payment account. It's now understood that this invoice had been intercepted by the scammer, who had changed the payment account details on the invoice to their own bank account details and so deceived O into instructing a legitimate invoice payment to an incorrect payment account.

Santander discussed the payment with O and later processed it as instructed. O discovered and reported the scam to Santander the next day, when the Company confirmed that no payment had been received by them and that their payment account details hadn't changed. O weren't happy that Santander had processed the payment to the scammers or that Santander weren't able to recover the money that O had lost. So, they raised a complaint.

Santander responded to O and explained that they didn't feel they'd acted unfairly or improperly in how they'd processed O's instructed payment. However, they did acknowledge that they hadn't attempted to recover the money as quickly as they could have. And while Santander didn't feel that O's money would have been recoverable had they acted when they should have, they did apologise to O for the delay and pay £100 compensation to O for the trouble and inconvenience O may have incurred as a result. O weren't satisfied with Santander's response, so they referred their complaint to this service.

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'd like to begin by confirming that this service isn't a regulatory body or a Court of Law and doesn't operate as such. This means that it isn't within my remit here to declare that Santander have or haven't acted in a non-regulatory or unlawful way.

Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the circumstances and factors of a complaint into consideration.

It's clear that O were the victims of an invoice interception scam here. So, I've considered whether Santander should reasonably have acted differently to how they did, and if so, whether this would most likely have resulted in a different outcome to what happened.

There's some disagreement between O and Santander as to what was or wasn't said during the telephone calls between them that took place on 13 April 2022. Unfortunately, recordings of these telephone calls aren't available. This means that I've had to consider what I feel was most likely to have happened, on balance, and in consideration of the information and evidence I do have available to me.

O are unhappy that Santander processed the payment to the GBP account given by the scammer from O's USD account. This meant that, because the payment wasn't between two GBP accounts, that Confirmation of Payee ("CoP") wasn't available. And O maintain that they instructed Santander to transfer the relevant funds from O's USD account to O's GBP account before then making the payment from O's GBP account – which would have allowed CoP to be performed and which O maintain would have highlighted that the recipient scammer account wasn't in the name of the Company as O believed.

In their response to the view of this complaint put forwards by our investigator, O have said that whenever O have had to make payments to GBP accounts that they have always asked for the money to be transferred from O's USD account to O's GBP account, so that the payment can be made from O's GBP account.

However, O's position here doesn't appear to be supported by the movements from O's accounts. And it's notable that O made prior payments to the Company directly from O's USD account on 20 December 2021 and 11 February 2022.

Additionally, Santander have detailed notes of the calls that took place on 13 April 2023, and these include that while O did initially ask Santander to transfer the money to O's GBP account before making the payment, Santander's advisor explained that previous payments to the Company had been made from the USD account directly and that O then confirmed that payment directly from the USD account would be acceptable. And O's agreement and understanding that the payment would be made directly from the USD account is also confirmed in a note of another call that happened later that day.

In consideration of all these points, I don't feel that Santander did act unfairly by processing the payment directly from the USD account as they did. This is because O had made prior payments to the Company directly from the USD account and because I feel that it's more likely than not that Santander's notes – which confirm that O accepted that payment would be made directly from the USD account – are accurate.

Santander's notes also record that, when they were told by O that the Company's payment account details had changed, Santander told O that they weren't able to verify the validity of the new account details and so asked O to contact the Company and confirm with them that the payment account details had legitimately changed. And O have confirmed that they did then contact the Company to confirm whether the payment account details had changed but that the Company employee they needed to speak with wasn't available at that time.

Santander also have note of a later call, when O told Santander that it had been confirmed to O by the Company that the payment account details had changed and that Santander should therefore process the payment to the new account details as instructed. And it was only after receiving this confirmation from O that Santander proceeded to process the payment as instructed. And, having received such confirmation from O that it was okay to process the payment, I don't feel that Santander acted unfairly by doing so.

I feel that by asking O to confirm with the Company that the payment account details had changed, that Santander were effectively asking O to complete a check which I consider was broadly equivalent to CoP – which it appears that O may not have accurately done. And I say this because again I feel it's more likely than not that Santander's notes regarding these calls – including that O confirmed that the payment account for the Company had changed – are accurate.

O may point out that Santander's terms and conditions confirm that CoP should be carried out by Santander and O may question why it was asked to complete an equivalent check rather than Santander completing such a check. But as explained, as it presently stands CoP is available on transfers between UK based GBP accounts, and Santander doesn't have the facility to conduct CoP on transfers between accounts of differing currency types. As such, I feel that Santander's terms refer to instances where CoP can reasonably be undertaken by them, and not to cases – such as this one – where CoP isn't possible.

And so, in the absence of Santander being able to conduct CoP themselves, I don't feel it was unreasonable for Santander to ask O to confirm with the Company directly, before the transfer was processed, that the Company's payment account details had in fact changed.

O have also said that they're unhappy that O processed the payment from the USD account without explaining the disadvantages of doing so. As discussed, the primary disadvantage of processing the payment from the USD account would be that CoP couldn't be confirmed. But, given that Santander received confirmation from O that it had undertaken a check which I consider to be broadly equivalent to CoP by confirming with the Company directly that the payment account details had changed, I don't feel that there was any tangible disadvantage to making the payment from the USD account as O suggest.

I've also considered whether there was anything in the nature of the payment itself which should have given Santander any cause to suspect that something untoward might be taking place. This could be, for instance, if the payment was unusually large or was being made to a new payee. But, as explained above, O had made several recent similar payments to the Company, and I don't feel the payment in question was unusual in comparison to those other payments – other than in regard to being made to new payment account details, which also as explained, I don't feel that Santander acted unfairly or unreasonably in response to.

Finally, being satisfied that it wasn't unfair for Santander to have processed the payment as they did, I've considered how Santander acted when they were made aware of the scam, including whether they acted to try to recover O's money in a timely manner.

Santander have acknowledged they didn't attempt to recover the money from the scammer's account as quickly as they should have done, and they've apologised to O for this and paid £100 compensation to O for any trouble and inconvenience O experienced as a result.

It's been suggested by O that had Santander acted more quickly, that their money could have been recovered. But unfortunately, I feel that this was unlikely. I say this because it's usually the case that scammers withdraw money from recipient accounts very quickly, and O only realised and reported the scam the day after it took place. Also, the recipient account to which O was scammed into sending the money is based in an overseas territory, within which recovery of funds is only possible if the account holder – in this case the scammer – consents to that recovery. And I feel this would have been unlikely for obvious reasons.

As such, I feel that even had Santander acted to try to recover O's money when they were first informed of the scam, that recovery of O's money would most likely not have been possible. This means that I don't feel that Santander's actions did directly lead to O's money

not being recoverable. And consequently, I don't feel that Santander should fairly be instructed to reimburse the money to O as O would like.

Finally, I feel that the £100 compensation already paid by Santander to O for not attempted to recover the money as quickly as it should have done is a fair amount here. This is in acknowledgement that the £100 is compensation for the inconvenience O experienced by having to chase this matter with Santander and isn't regarding O's money not being recovered – which as explained, I don't feel was likely in any scenario here.

All of which means that, while I sympathise with O regarding what happened, I don't feel that Santander should fairly or reasonably be asked to reimburse any of the money the O lost because of the scam to O. This is because I don't feel that Santander acted unfairly by processing the payment as they did, and because I don't feel that recover of O's money would most likely have been possible had Santander acted more quickly than they did.

I realise this won't be the outcome O was wanting, but it follows that I won't be upholding this complaint or instructing Santander to take any further action here. I hope that O will understand, given all that I've explained, why I've made the final decision that I have.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask O to accept or reject my decision before 24 August 2023.

Paul Cooper
Ombudsman