

The complaint

Mrs J has complained that Santander UK Plc won't refund the money she lost after falling victim to a scam.

What happened

Mrs J was cold called by scammers claiming to be the police from a different part of the country. They said they'd arrested Mrs J's carer, who had stolen Mrs J's ID and bank cards. Mrs J did not have a carer and had not lost any ID or cards. Mrs J pointed out that she wasn't from that part of the country, so the scammers pretended to transfer her to a more local police department.

The scammers told Mrs J that the person they'd arrested was working with her Santander bank branch. They asked Mrs J to join their covert police operation, and persuaded her to withdraw £5,000 in cash from the branch then read them the serial numbers. They said the cash was fake and sent a courier to collect it, saying they'd reimburse her. The courier had no uniform or identification and said they couldn't show Mrs J their police vehicle as they'd parked some distance away.

The following day, the scammers called again and told Mrs J another local branch of hers was corrupt, this time with a different bank I'll refer to as L. They persuaded her to withdraw £8,000 cash from her L account and hand it to them.

The scammers instructed Mrs J to mislead the banks and tell them she was going to gift the cash to family. Both banks warned Mrs J about scams, and between the two of them asked her a long series of questions. For example, L asked whether anyone had asked her to make the withdrawal, whether someone had asked her to report back after, and whether someone was going to collect the cash later, which to each Mrs J answered "no".

Santander didn't think they were liable for Mrs J's loss. She came to our service.

Our investigator looked into things independently and didn't uphold the complaint. Mrs J's representatives didn't agree, so the complaint's been passed to me to decide.

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 understand that Mrs J fell victim to a scam, and so she has my sympathy. I appreciate this can't have been an easy time for her, and I appreciate why she feels that her money should be returned. It's worth keeping in mind that it's the scammers who are primarily responsible for what happened, and who really owe Mrs J her money back. But I can only consider what Santander did. Having carefully considered everything that both sides have said and provided, I can't fairly hold Santander liable for Mrs J's loss. I'll explain why.

It's not in dispute that Mrs J authorised the withdrawal. So although she didn't intend for the money to end up with scammers, under the Payment Services Regulations she is liable for the loss in the first instance. And broadly speaking, Santander had an obligation to follow her instructions – the starting position in law is that banks are expected to process payments that a customer authorises them to make.

Santander should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. But I also accept that a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. I've thought carefully about whether Santander should have done more in Mrs J's case.

Santander did talk to Mrs J about scams and asked some relevant questions, such as about whether she was under pressure, whether anyone had asked her to make the withdrawal, and whether she'd been asked to mislead the bank. But I can't see that they sufficiently drew Mrs J's attention to this particular type of scam or probed this payment sufficiently with her.

However, even if Santander *had* given better warnings or asked further open questions about this withdrawal, I can't say it's most likely that this would've prevented Mrs J's loss. L also gave Mrs J written and verbal warnings about scams the following day, and they drew her attention to this very type of scam, noting that scammers may pretend to be the police, the police won't ask you to withdraw money, and that scammers will tell you to lie to staff. But Mrs J then misled L, too. Mrs J maintained her story across rounds of warnings and questioning with two different banks, even when warned and questioned about this type of scam, and even after having time to sleep on it and reflect between her withdrawals with Santander and L. She promised the scammers not to divulge any details to her banks. And I've not seen anything which suggests she was open to being persuaded by the bank. With all that in mind, I cannot reasonably conclude that Mrs J would've changed her mind with further questioning. And even with further questioning, if Mrs J was simply adamant that she preferred to gift the money in cash, then there wasn't much Santander could reasonably do. Neither bank's branch staff uncovered anything concerningly suspicious, and it doesn't look like Santander had a sufficient enough basis on which to call the police on Mrs J.

I should also explain that even if I thought further intervention would have most likely made a difference, I still don't think I could fairly hold Santander liable for the loss in this case. Mrs J was told inconsistent and highly implausible things by the scammers, and she didn't take any reasonable actions to check what she was being told. She was given scam warnings and was asked relevant questions by two banks, but misled them both. I can't see that Mrs J had any reasonable basis to believe what she was being told, whereas some of the things the scammers told her should have reasonably alerted her to the fact that they were not who they said they were. By disregarding all these signs and handing her money to unidentified strangers in the way she did, Mrs J failed to do what a reasonable person would be expected to, and acted with serious disregard to obvious risks. So I'm afraid that Mrs J's actions here were negligent to such a degree that it seems unfair to hold Santander responsible at all.

I've considered what Santander did to try to recover Mrs J's money after she told them about the scam. Unfortunately, because Mrs J withdrew the money in cash and handed it to someone, there's nothing more Santander could do to recover it. I hope that the authorities are able to apprehend the scammers and recover Mrs J's money.

Lastly, Mrs J's representatives referred to another case, and I understand why they thought to do so. As they know, we look at each case on its individual merits. And this case has substantial differences to the one they quoted. For example, here Mrs J was significantly younger, she gave over a different story, she didn't take any reasonable actions to check what the scammers told her, it's clearer what the banks discussed with her and that they reasonably drew her attention to this type of scam, and so on.

So while I'm very sorry to hear about what happened to Mrs J, I don't think Santander should be held responsible for her loss. And so I can't fairly tell Santander to refund Mrs J's money in this case. This is a difficult message for me to give, and I know it's a difficult message for Mrs J to receive. But given the evidence at hand and the circumstances of this case, I'm unable to reasonably come to another conclusion.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 20 November 2023.

Adam Charles
Ombudsman