

## The complaint

Mrs M complains that Santander UK Plc (Santander) won't refund the money she lost when she fell victim to a scam.

## What happened

The details of this complaint are well known to both parties. So rather than repeat them all again here, I'll briefly summarise the key points.

Around May 2022, Mrs M was contacted by scammers. They claimed to be from the National Crime Agency (the NCA) and said they were working with another bank (N) who she held an account with. She says they knew lots of her details. They said her phone had been hacked and bank employees were trying to steal her funds.

Mrs M says the scammers, posing as the NCA, asked her to download remote access software, as well as an app for 'X', a cryptocurrency wallet, and transfer money from her bank accounts to X. This included payments from her Santander account. The payments were made over a period of just under two weeks.

When Mrs M received an email stating a loan had been applied for, she realised she had been scammed. She reported this to Santander, but it didn't agree to refund her – citing that it had spoken to her at the time and she had given false reasons for the payments (on the instruction of the scammer).

Unhappy with Santander's response, Mrs M referred the matter to our service. Our investigator looked into things – but didn't think Santander was liable for the loss. In broad summary, he concluded the payments didn't fall under the scope of the Lending Standards Board's Contingent Reimbursement Model (CRM) code. And in light of the reasons she gave for the payments at the time, he didn't think Santander was at fault for not realising she was being scammed at the time.

Mrs M appealed the investigator's view. I've summarised the main points she has pushed back on:

- She didn't have control of the X account;
- She wasn't aware of some of the transactions made, including transfers into her current account from her savings account (both held with Santander) which were used to fund some of the transactions; and
- She doesn't understand why Santander won't refund her when N – from whose account she also made payments to the scam – has.

I issued my provisional decision on Mrs M's complaint earlier in October 2023, explaining I wasn't minded to uphold the complaint for the following reasons:

*First, I've considered Mrs M allegation that she was unaware of some of the payments. She says they were made by the scammers – who had control of her phone – without her consent.*

*In broad terms, under the relevant regulations – the Payment Service Regulations 2017 (PSRs) – Mrs M would generally be liable for the disputed payments if she authorised them. And Santander would be liable if she didn't.*

*The PSRs specify that authorisation depends on whether the payment transactions were authenticated correctly – and whether the account holder consented to them.*

*I've received audit information from Santander which satisfies me the payments were properly authenticated; the correct payment steps were followed. In line with how the PSRs define consent, they would therefore be treated as authorised if Mrs M completed the agreed steps, in line with the account terms, to make them. Or if someone else was acting on her behalf (an agent) and used those steps.*

*Agency can be created not only by the bounds of the actual authority granted by the principle. But also by the acts of the agent which appear to have been made with the principle's authority.*

*In this case, what Mrs M told me persuades me, on balance, that she had granted agency to the scammers. This is not the same as informed consent – I know she was tricked. But she told me none of the payments were initiated by her. Yet she was aware of at least some of them - as Santander flagged a number of payments to discuss with her.*

*When Santander spoke to Mrs M about those payments, she confirmed she was making them. So, if she wasn't initiating the payments, it seems she knew the scammers (posing as the NCA/her other bank) were doing that. Which means she must have known they had access to her account. Yet she still told Santander she was happy to make the payments. And I've seen no suggestion she took steps to revoke the scammer's access. Which means the scammer's agency to act for her continued.*

*It also appears that touch ID was being used to access Mrs M's mobile banking to make these payments. And Santander's records suggest she told it she authorised the payments when first reporting the scam. While I can't know for certain what happened, I must decide what's more likely. In line with the points I've set out above, I'm persuaded it's likely the payments were made in such a way that they would be deemed authorised under the PSRs.*

*As above, I do appreciate Mrs M was being tricked by the scammers about what they were actually doing. But as the payments would be deemed authorised, the starting position is that Santander isn't liable. I've gone on to consider whether there are any other reasons that Santander should refund her, in line with the duty it holds to help protect customers from financial harm from fraud and scams.*

*Even when a payment is authorised, there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment.*

*In this case, Santander did identify some of the payments to X as suspicious. It spoke to Mrs M about what she was doing, and asked relevant questions to assess the fraud risk. Based on the responses she gave, I consider it reasonable that Santander was reassured and therefore made the payments as instructed, in line with its regulatory duty to process authorised payment instructions without undue delay.*

*In an intervention call I've listened to, Mrs M told Santander she was paying X for cryptocurrency investing, as recommended by a friend. She confirmed she had used the X account before, had no issues accessing or withdrawing funds from it, and no one else had access to it. She also confirmed, in response to Santander's questioning:*

- She hadn't been contacted by someone claiming to be the bank (or the police or another reputable institute);*
- She hadn't been told to lie about the payments, or that someone at her bank was under investigation;*
- She hadn't been told the money would be sent back to her Santander account; and*
- She hadn't downloaded any apps at someone else's request or given anyone remote access to her device.*

*What Mrs M has subsequently disclosed about the scam makes it clear these answers didn't accurately reflect what she understood to be happening. Having listened to the call and considered the overall tone in addition to the answers given, I consider it reasonable that Santander relied on the responses Mrs M gave. Its line of questioning flagged up several features relevant to the scam she fell victim to, yet she didn't raise anything of concern. In the circumstances, I'm not persuaded it's at fault for not realising she was falling victim to a scam at the time.*

*While not all the payments were flagged, I wouldn't reasonably expect them to have been. Taking into account what Santander had already been told about the prior payments to X, I don't think all the subsequent payments reasonably looked suspicious or uncharacteristic. Nor do I have confidence, bearing in mind what Mrs M told Santander when it did speak to her about some of the payments, that further questioning on other payments would have prevented her loss.*

*I've considered whether there any other reasons why Santander should fairly be held liable for Mrs M's loss. But I've not found that there are.*

*As Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) code – which sets out how banks should deal with certain types of authorised scams – I've considered whether Mrs M is entitled to a refund under this code. But I've found it doesn't apply here, as it doesn't cover me-to-me payments. Which is how these payments would be characterised. While we know the funds were transferred on from X to the scammers (Mrs M has checked and X have confirmed no funds remain in her account), the direct payment from Santander went to an X account in Mrs M's name.*

*However, Mrs M says she didn't have control of the X account. So I have considered whether it's accurate to deem the disputed transactions a me-to-me payments.*

*I've found that, when Mrs M first reported the scam to Santander, she said she had been convinced to download X's app. And she has consistently confirmed she was aware of the X account. I'm also persuaded that, at least initially, she had access to it – as she has previously said she was able to log in and see the transactions coming in and out. Furthermore, X has subsequently been able to speak to her about the account, given that it was registered to her.*

*While I understand the scammers also had access to the X account, these would still be deemed me-to-me payments. It seems likely, based on what Mrs M has told us, that the scammers changed the password to her X account once the scam had been uncovered. But I'm persuaded the account was set up in Mrs M's name with her knowledge and involvement, and that she had access to it at first.*

*I'd also add that the CRM code only covers payments between UK-based accounts denominated in pounds sterling (GBP). We know the payments to X were transferred on to the scammer. It's unlikely that was a transfer between GBP accounts; it was probably a transfer between cryptocurrency wallets. And so that is a further reason why the CRM code doesn't apply here.*

*While I appreciate Mrs M has been refunded by another bank in relation to this scam, that wasn't something our service determined it should do; it's something N offered to do. As Santander didn't do that, it's our role independently decide how the complaint should be resolved. We look at each case on its individual merits.*

*Overall, I therefore haven't found Santander made errors which caused, or contributed to, Mrs M's fraudulent loss. While I appreciate she was tricked by a cruel scam, I therefore don't consider it fair to direct Santander to refund her for this.*

I invited both parties to submit further comments and evidence. Santander hasn't responded by the deadline I set. Mrs M has responded to say:

- As N has refunded her the full amount, why can't Santander do the same;
- She has also read of similar cases where Santander has refunded the money;
- She was under threat from the scammers and acted in fear. She was the victim and never meant to mislead the banks – who should have asked better interrogative questions. She says the calls make it obvious that it was done in an 'intensive and stressed manner'; and
- We should investigate the funds transferred from her savings account to her current account, as that wasn't done with her approval. Her online banking access was blocked most of the time so she couldn't see the transactions happening.

### **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, including carefully considering Mrs M's response, I've decided not to uphold the complaint. This is largely for the reasons given in my provisional decision, which are set out above and form part of my final decision. So here, I will focus on responding to the points Mrs M raised following my provisional decision.

As my provisional decision explained, we look at each case on its own individual merits. N's decision to refund Mrs M, and Santander's decision to refund others, doesn't have a bearing on my judgment of whether, in these circumstances, Santander should refund Mrs M.

Mrs M has clearly been a victim of a scam. I do have empathy for her situation, as I know she has lost out. However, that in itself doesn't give me fair grounds to hold Santander liable for her loss; banks are not always obliged to refund scam victims. I've set out the considerations for whether Santander should refund Mrs M in my provisional decision. For the reasons I've explained, I'm not persuaded it should.

I've considered Mrs M's point about how she came across during the intervention calls. As my provisional decision acknowledges, I did take into account her tone as well as her words. Overall, I think Santander asked reasonable questions to assess the fraud risk. And I don't think it had cause to be concerned based on what she said or how she said it.

I'd reassure Mrs M I have considered her point about whether she made the transfers from her savings account to her current account, which were used to fund the onward payments to X. My provisional decision starts by addressing whether the payments were all authorised. To be clear, that included the transfers between her accounts.

As I explained, even if Mrs M didn't initiate all the payments, they would still be deemed authorised if made by some acting as her agent – even if the agent's actions went beyond what Mrs M was anticipating.

The savings payments started prior to Santander's discussions with Mrs M about some of the payments to X, which she confirmed she agreed to. So if, as Mrs M has said, she didn't initiate any of the payments, she would have been aware the scammers had access to her account and could make payments. As she didn't take steps to remove their access, I think that agency relationship held throughout the scam.

Furthermore, Santander's records suggest touch ID was being used to access Mrs M's mobile banking. On balance, I think Mrs M likely either completed the payment steps herself, or was aware the scammers had access to complete these steps – regardless of whether she was aware of each transactions individually. Either way, in line with the PSRs, the payments would be deemed authorised.

For these reasons, I there don't consider it fair to hold Santander liable for Mrs M's loss.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 November 2023.

Rachel Loughlin  
**Ombudsman**