

The complaint

Ms W complains that Santander UK Plc (“Santander”) failed to refund monies she lost as a result of a scam.

What happened

What Ms W says

Ms W received a message purporting to be from the TV Licensing authority. She provided details from one of her debit cards in a response to the message. She later realised it was suspicious and contacted Santander about it. They cancelled her card and replaced it with a new one.

A few weeks later, Ms W received a call from a person who I’ll refer to as J. This person told Ms W that he was from Santander and that they’d noticed unusual payments had been attempted from her account. Ms W said she checked that J was legitimate by identifying the phone number he was calling from which matched the one from the back of her debit card.

J talked with Ms W at some length and went through various aspects of security on her account, including telling her recent genuine transactions that had taken place.

J asked if Ms W had received any suspicious messages recently and Ms W told him about the TV Licensing message. J explained that this was a “phishing” attempt to gather information about her and that Santander believed there was a corrupt employee working to defraud customers.

Ms W said that J was very professional and used language that she was familiar with from other calls with the bank. He developed a sense of urgency and fear by the way he spoke to her and Ms W said she was genuinely in fear of losing her funds. J asked Ms W if she would participate in an operation to catch the employee and Ms W agreed to be involved.

She was told that a series of payments would be made from her account that wouldn’t actually be real, and this would help catch the employee. Ms W was given a story to tell Santander if they spoke to her about the payments from her account. She was told to tell the bank that she was buying a car and was at the dealership, so needed the funds releasing immediately. Ms W said she was transferred to several other “Santander” employees who ran her through the call to ensure she didn’t raise any suspicion when she made the payment from her account.

Ms W made the first payment using her internet banking which wasn’t immediately released from her account. Ms W said that J appeared to be able to transfer her straight into the telephone queue at Santander for Ms W to speak to the call handler about the payment.

Two calls were held with Santander about the payment, and Ms W told them that she was at the car dealership and needed the funds releasing immediately because she was purchasing a car. Santander discussed generally about the payment and advised Ms W to ensure she’d actually seen the car. She was advised that if an upfront payment was asked for, it was

probably a scam.

Ms W told Santander that she was happy with the payment and after checking the account number and sort code, the payment was released. Ms W was later persuaded to move additional funds as part of the scam to ensure her funds were safe. The following is a table of the three scam payments:

Date & Time	Amount	Account Balance	
23/02/2019 13:12 hrs	£21,995.00	£2964.44	First Payment
23/02/2019	£8,000	£10,964.44	Transfer into A/C
23/02/2019 19:00 hrs	£10,005.00	£959.44	Second Payment
	£1,042.68	£2,002.12	Transfer into A/C
	£6,401.58	£8,403.70	Transfer into A/C
24/02/2019 09:20 hrs	£9003.70	£600.00 (D)	Final Payment
Total Lost	£41,003.70		

Ms W was told by J to report to her local branch of Santander the following Monday for the replacement of her cards and new accounts. When Ms W visited the branch, they knew nothing about her situation and quickly confirmed she'd been the victim of a scam.

Ms W sought a refund from Santander, but they didn't provide her with one as she authorised the payments and told them she was purchasing a car at the time. Eventually, Ms W complained to Santander about their decision not to refund her. Ms W also reported the scam to Action Fraud. Santander declined the complaint and Ms W, via her representatives brought her complaint to the Financial Ombudsman Service for an independent review.

What Santander say

Santander reviewed their handling of the payments made from Ms W's account and advised her that their security system had blocked the first payment for further investigation. This was completed during the call held with Ms W where she told them she was purchasing a car. Santander said that "scam education" was carried out during the call and they weren't liable for the refund. Santander told Ms W that the transaction couldn't be considered under the latest scam regulations because they hadn't come into force at the time of the payments.

The investigation so far

Both parties were asked for information about the scam. Ms W's representatives provided a breakdown of the situation, explaining why they thought that Santander had failed Ms W. In summary their case was that:

- Santander should have carried out further questioning of Ms W at the time. They didn't think that the questions went deep enough and the situation warranted further questioning.
- The second and third payments should have also been questioned which would have

given the opportunity to prevent further losses.

- Inter account transfers added to the unusual nature of the payments.
- Santander breached several duties relating to the protection of their customer's accounts.

Santander provided details of the payments and some call recordings held with Ms W. They reiterated their position regarding the refund.

After considering the evidence the investigator didn't uphold the complaint. He explained that:

- Based on Ms W's responses to Santander's questions, they had no reason to suspect she was the victim of a scam and refuse to make the payment.
- Ms W was persuaded to lie about the situation (based on her belief that she was assisting an investigation).
- Ms W wasn't showing any signs of distress or nervousness that Santander should have identified.
- The second and third payments weren't unusual in the context of the reason given for buying a car.
- Santander had attempted to retrieve the funds at the time but were unsuccessful.

Ms W disagreed with the outcome and her representatives made further comment, summarised as:

- Santander failed to act in accordance with BSI standards related to increased account protection after Ms W reported the "phishing" call to them a few weeks earlier.
- Santander should have been on the lookout for "red flags" in Ms W's answers and asked further probing questions.
- The scam was quickly uncovered when Ms W went into a branch. If Santander had asked appropriate questions at the time – it should have been easily uncovered.
- The pattern of payments were unusual and the final payment left Ms W with an overdraft.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice (including those referred to by Ms W's representatives in their submissions to this service); and, where appropriate, what I consider to be good industry practice at the time.

I was sorry to learn that Ms W was a victim of a cruel scam and I recognise that she made

the payments on good faith, believing she was assisting with an investigation.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

These were all 'authorised payments' even though Ms W was the victim of a scam. Ms W made the payments herself. So, although Ms W did not intend the money to go to a fraudster, under the Payment Services Regulations 2017, and the terms and conditions of her account, she is presumed liable for the loss in the first instance.

But that is not the end of the story. 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 make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

This means that there are circumstances, irrespective of the payment channel used, where a bank should, in my opinion, fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

In this case, I need to decide whether Santander acted fairly and reasonably in its dealings with Ms W when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

Did Santander act fairly and reasonably when it made the payments?

As I've explained above, I consider that as a matter of good practice Santander should have been on the lookout for unusual or uncharacteristic transactions. Here, the first payment was made by Ms W using her internet banking facility and was blocked by Santander.

Ms W spoke with two call handlers about the payment leaving her account. The first part of the call is not available. During the conversation with the second call handler, it's apparent that the reason for the payment had already been discussed and Ms W had told them that she was at a car dealer to buy a vehicle, and this was the reason for the payment. She was asked if she'd done the "usual checks" before handing over such a large sum of money, completed a test drive and happy with what she was purchasing. There's reference to the earlier conversation about scams and Ms W is told that if she hadn't seen the car, it's likely a scam.

Ms W confirms she's happy with the payment and it's then released. The later payments (to the same payee) weren't stopped by Santander.

Ms W has said the way she acted on the call should have given Santander enough evidence to realise something was amiss. She says she was stressed and nervous. Having listened to the call, there's nothing that immediately stands out that I think the call handler(s) should have picked up on. Ms W answered the questions and appeared at ease with the situation when she told them to make the payment. So, I don't think that Ms W's manner during the call should have given Santander grounds to approach the situation differently.

I've also considered the points raised by her representatives that Santander failed to ask enough probing questions during the calls. Ms W was asked what she was making the payment for and told them it was for a car purchase, and she was at the dealers.

Given this was the basis for the payment, it's reasonable for Santander to approach the call based on a possible car scam. They asked relevant questions regarding this because the main threat from a car scam is that it doesn't actually exist. So, when Ms W said she was at the dealers with the car, this would alleviate that possibility.

Once Ms W had told Santander that she was at the dealers, I don't think they had any other reason to enquire further about the payment. I don't think there were any particular "red flags" that Santander missed here, and it was reasonable for them to release the payment.

It's been argued that multiple payments to a car dealer are unusual and the movements through Ms W account were suspicious. Having further considered this point, I don't think in these circumstances those payments were particularly noteworthy.

Moving other funds into an account for an expensive purchase isn't out of the ordinary and I don't think that Santander should have intervened at either of the later payments. As far as Ms W's story went, she was buying a car and those payments went to the same payee, so I think that Santander would treat them as part of the same purchase that they'd already spoken to Ms W about. If they'd called her again, there's no reason to think the conversation would have gone differently.

A case has been made that the earlier "phishing" call should have elevated Santander's response to Ms W. At the time of the call, Ms W contacted Santander about it and they cancelled her debit card and re-issued it. There are no further notes of what happened, but typically a conversation would be held to talk about scams.

Whilst there's no specific evidence that Santander educated Ms W about this, in a call with them after the scam, she refers to keeping an eye on her account. I've taken this to mean Ms W was aware of the dangers posed by the "phishing" attempt. It seems likely that discussions were held at the time and together with the cancellation of the card, I don't think Santander could have been expected to do much more.

I understand the point her representatives are trying to make about how quickly the scam was uncovered when Ms W went to the branch for her "appointment". But, the situation was very different from that which faced the call handlers when Ms W was spoken to. By that time, all three payments had left the account and Ms W had been told she had an appointment with a named person. But, there was no appointment and the named person didn't exist, so it's no surprise that Santander were able to quickly determine that a scam had taken place.

Recovery of funds

Unfortunately the funds had already been moved on by the time Santander were made aware of the scam. I don't think there's anything more they could have done to retrieve those funds. It's likely that the "appointment" made for Ms W was a deliberate tactic to provide a

window for the scammers to move those funds before the scam was uncovered.

I have much sympathy for Ms W as the victim and I think it's worth reiterating that it was scammers who were responsible for stealing her funds. The complaint against Santander is that they didn't do enough to protect her funds and as a result should now refund Ms W.

I've objectively reviewed the evidence and I'm afraid that I don't think that Santander could have been expected to do any more in these particular circumstances. I understand this will be a disappointment to Ms W, but I can't ask Santander to refund her the funds she lost.

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 Ms W to accept or reject my decision before 1 September 2023.

David Perry
Ombudsman