

## The complaint

Mr M complains that Santander UK Plc has declined to reimburse him for payments made as part of a scam.

## What happened

Mr M has a representative in this complaint, but for clarity I'll refer to comments made on his behalf as his own.

Mr M says he saw an advert on social media in relation to getting an income as a student. This involved having money paid into his account which he would then need to send on to another account. Mr M says he didn't realise this was illegal and he didn't expect them to spend any of his own money.

On 12 December 2022, Mr M received £9,875 into his account and a payment was made using this for £3,100. When another payment was attempted for £5,500 that day, Santander spoke with Mr M about it. Mr M confirmed the payments above and said he was trying to make a payment to purchase a car – he said he was with the seller and had seen the car.

On 7 January 2023, £3,000 was paid into his account which Mr M says was his own money. Most of this was sent to the same payee as the above transactions.

Mr M says that he didn't make the payments on 7 January 2023 – he had handed a third party his phone when they were in a car together so they could check the money had been received, and he didn't realise they'd spent his money until later. Mr M says he is entitled to a refund of around £3,000 under an "authorised push payment scam code" and that he's been the victim of a scam. He says Santander should have provided him with more advice or support.

The payment into Mr M's account for £9,875 was later reported as fraud and investigated. Santander has declined to provide a refund to Mr M on the basis that it didn't think he had been the victim of a scam and that he'd allowed a third party to use his account. During a call on 25 January 2023 Santander also let Mr M know it would be closing his account.

When Mr M complained to our service, the investigator didn't uphold the complaint. In summary they didn't think Mr M had been the victim of a scam or that he was entitled to a refund because they weren't persuaded that Mr M had thought what he was doing was legitimate. They said that if Mr M had let a third party make payments using his account and they'd spent more than he intended them to, then it would still be fair to treat these payments as authorised. They weren't persuaded that if Santander had intervened this would have prevented the payments or any personal loss to Mr M.

Mr M didn't agree and asked about the closure of his account. The investigator explained they thought the account was being closed fairly in line with the account terms and conditions.

Mr M requested the matter be considered by an ombudsman and I issued my provisional

decision on 30 March 2024. I explained I didn't intend on upholding the complaint because I wasn't persuaded that the disputed payments were unauthorised or that it would be fair to provide him with a refund. I also explained why I thought Santander had acted fairly and in line with the account terms and conditions when closing his account.

Both Mr M and Santander confirmed receipt of my provisional decision and said they had no further comments to make.

### **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'm not upholding this complaint – I'll explain why.

My understanding is that Mr M accepts he authorised the payments out of his account on 12 December 2022 using funds that have since been reported as fraud – it's not clear whether he made these payments himself or allowed someone else to do so. However, on 7 January 2023, when he gave his phone to a third party after opening his banking app, he says he wasn't expecting them to make any further payments. He is only requesting a refund of these payments made using his money.

#### Did Mr M authorise the disputed payments?

Mr M says he didn't authorise the payments from his account on 7 January 2023 – he says he didn't make the payments himself or allow anyone else to make them. Rather, he gave his phone to a third party, while his banking app was open to show them that the money on 12 December 2022 had been received.

It isn't clear whether Mr M made the payments on 12 December 2022 himself or if he gave a third party access to his account that day. But by handing over access to his account on 7 January 2023 as he's described, Mr M gave a third party the ability to use his account including making payments.

I'm not persuaded by Mr M's explanation that he only expected to show them previous payments had been received. This is because he wouldn't have needed to hand over his open banking app for someone to know that he had sent them money over three weeks earlier. And if he was in the car with them he would have seen they were taking steps on his phone for enough time to transfer money into the account and onwards rather than just looking to see previous activity.

Mr M says he was locked in the car with them, implying that the dynamic had shifted at some point. However, if this was why he allowed a third party to make payments from his account, this wouldn't render the payments unauthorised in the circumstances.

So, while Mr M may not have agreed to this third party making payments using his own funds, on balance I'm not persuaded that Mr M was unaware they were making further payments using his account. For these reasons, I think it's fair for Santander to treat these payments as authorised.

I note as a wider point, that under the relevant law (the Payment Services Regulations 2017) and the terms and conditions of Mr M's account, that Mr M isn't entitled to a refund if he has acted fraudulently.

#### Has Mr M been the victim of a scam?

Mr M says that he's entitled to a refund under an authorised push payment scam (APP) code – I think he's referring to the Contingent Reimbursement Model (CRM) code of which Santander is a signatory.

The CRM Code can provide additional protections to the victims of APP scams where certain conditions are met.

Firstly, Mr M is saying that he didn't authorise the disputed payments. And if this was the case then the code would not be relevant to these payments. However, if this was not the case (as I've concluded above) I still don't think Mr M would be entitled to a refund under this code. This is because the code defines an APP scam for its purposes as one where a customer has made a payment to another person (using specific methods) either:

1. When they have been "*deceived into transferring the funds to a different person*", or
2. Done so "*for what they believed were legitimate purposes but which were in fact fraudulent*".

Mr M *isn't* claiming that he was tricked into sending his funds to a different person than intended. So, I'll focus on the second scenario.

Mr M has explained he understood he would be receiving money into his account and sending this on. He's told us he trusted the third party, but he hasn't provided an explanation as to why he thought what he was doing was legitimate.

Mr M doesn't appear to have questioned the premise; where the funds were coming from, why he needed to pass them on, or how this generated an income. He hasn't described being misled as to the purpose of what he was doing or provided any explanation of what he thought the purpose was, so it's not clear in what way he believes he has been deceived.

Giving someone else access to an account that they use beyond what is expected, isn't the same as being deceived into making payments as part of a scam.

I also note that when Mr M spoke to Santander on 12 December 2022 about the £5,500 payment, he wasn't honest about what the payment was for – rather he told them he was purchasing a car. Without an alternative explanation about why he thought he needed to be dishonest, I think this further indicates that he understood he was doing something that at the very least Santander wouldn't allow.

So, I'm not persuaded that Mr M thought he was doing something legitimate. This means that I don't think Santander has acted unfairly by concluding Mr M hasn't been the victim of a scam for the purposes of the CRM code.

Aside from this code, in accordance with the law, regulations and good industry practice, a bank should be taking reasonable steps to identify and protect its customers against the risk of fraud and scams. Mr M says Santander should have provided him with more advice and support given it identified suspicious activity.

As I've said, when Santander did speak to Mr M on 12 December 2022 about the payments, Mr M was dishonest about the purpose of the payments. He confirmed he was purchasing a car that he had seen and said he was with the seller. Mr M also provided an explanation for why he had made the payment in two parts. At that time Santander wasn't aware that the funds received into Mr M's account were fraudulent and so I don't agree it has failed to act in line with good industry practice. I think Santander's intervention was proportionate and that it was Mr M who prevented Santander from uncovering what was really happening when he

gave them misleading information.

I'm not persuaded that had Santander contacted him again on 7 January 2023 that this would have prevented Mr M's loss. This is because I'm not persuaded he would have acted differently from on 12 December 2022 and been honest during a further intervention. I've explained why I think Mr M was aware the third party was using his banking app to make payments and note he has described being locked in a car with them at the time. So, I don't think it would be reasonable to conclude Santander would likely have been able to identify what was going on or for it to have been able to provide more tailored advice or support at the time.

When considering this complaint as a whole, for the reasons explained, I don't think Santander has acted unfairly in declining to provide Mr M with a refund.

#### Notice to close Mr M's account.

Santander has explained to Mr M that it took the decision to close his account after he could not prove entitlement to the funds he received on 12 December 2022 and because he allowed a third party access to his account.

In a call on 25 January 2023, this was confirmed to Mr M, but in practice it has kept his account open longer than the intended 30 days notice period as he has been repaying his overdraft.

The terms and conditions of the account explain the circumstances in which Santander can give less than two months notice or even immediately suspend or close an account. This includes when a customer misuses their account, acts dishonestly with it, or acts in any way to give rise to reasonable suspicion of fraud or other criminal activities. So, in the circumstances I think Santander has acted fairly and in line with its terms and conditions when closing Mr M's account.

#### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 June 2024.

Stephanie Mitchell  
**Ombudsman**