

The complaint

Mr H complains that Santander UK Plc won't refund all the money he lost when he was the victim of a scam.

What happened

In January 2024, Mr H received a phone call from someone who said they worked in the security department of a major online marketplace. The caller told him they had detected a scam and that his banking details had been compromised. And as the caller knew a number of his personal details, and he could see attempted purchases he hadn't made on his account with the online marketplace, Mr H believed the call was genuine.

The caller then asked Mr H to download remote access software to his computer so they could help him, and to open a bank account with another bank. And they told him money had accidentally been transferred into his Santander account, so he needed to send this to the new account he had opened. A number of transactions were then attempted on Mr H's Santander account, which I've set out below:

Date and time	Details	Amount
24 January 2024 11:21	Card payment	£1,970
24 January 2024 11:36	Card payment	£1,030 – declined
24 January 2024 11:45		£1,980
24 January 2024 12:23		£1,910
24 January 2024 12:32		£599 - declined
25 January 2024	Refund from Santander	£1,910 credit
27 January 2024	Credit from account with other bank	£1,990 credit

Unfortunately, we now know the caller was a scammer. After the scam was uncovered, Mr H reported the payments to Santander and asked it to refund the money he had lost.

Santander investigated and agreed to refund the payment of £1,910 as it could have done more to detect the payment and provide an effective warning. But it said the other payments weren't covered by the CRM code, and some money had been returned from the account it was sent to with the other bank, so it didn't agree to refund any of the other payments. Mr H wasn't satisfied with Santander's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the first payment of £1,970 was suspicious enough that Santander should have intervened before allowing it to go through. And they said that, even if Santander should have done more before the later payments went through, Mr H hadn't suffered a financial loss from these. So they didn't think Santander should have to refund anything further. Mr H disagreed with our investigator, so the complaint has been passed to me.

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.

As I've set out in the table above, five payments were attempted out of Mr H's Santander account as a result of this scam. But the payments for £1,030 and £599 were declined and didn't leave his account. Santander has already refunded the payment of £1,910. And the funds from the payment of £1,980 were returned to Mr H's Santander account from the account they were sent to. So Mr H hasn't suffered a financial loss as a result of these four payments, and so I haven't considered them further and have focused on the payment of £1,970 which hasn't yet been refunded.

Is the payment covered by the CRM code?

The Lending Standards Board Contingent Reimbursement Model (the CRM code) is a voluntary code, which Santander has signed up to. It sets out a number of circumstances in which firms are required to reimburse customers who have been the victims of certain types of scams. But it doesn't apply to card payments.

So as the £1,970 payment out of Mr H's account was a card payment, it isn't covered by the CRM code.

Did Mr H authorise the payment?

Generally a business can hold a customer liable for disputed transactions on their account if the evidence suggests it's more likely than not that the customer authorised the payments – for example, by making them themselves or telling someone else they could make them.

Mr H has said he wasn't aware of the £1,970 payment being made, and that it was made by the scammer while they had remote access to his computer. But he's also said he was following the scammer's instructions and doing what they told him to do. And he appears to have knowingly given the scammer remote access to his computer, and then to his banking and card details.

So I think it's likely that Mr H either made the payment by following the scammer's instructions, or allowed the scammer to make the payment by giving them access to his banking details. And so, while I appreciate he didn't intend for the money to ultimately be sent to scammers, I think Santander has acted reasonably in treating the payment as authorised.

Did Santander do enough to protect Mr H?

The starting position in law is that customers are liable for payments they authorise, so Mr H isn't automatically entitled to a refund here. However, 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 think 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 made 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.

So I've also considered whether Santander should have identified that Mr H was potentially at risk of fraud as a result of this payment.

But this first payment wasn't for a particularly large amount, or for an amount where I'd expect Santander to have identified it as suspicious based on its size alone. And it was the first of the payments made as a result of this scam to be requested, so there was no suspicious pattern of payments that Santander could have identified at this point either.

So I wouldn't have expected Santander to identify that Mr H could be at risk of financial harm as a result of any of this payment, and I don't think it's unreasonable that it didn't take any further steps or carry out any additional checks before allowing it to go through.

Mr H has argued that Santander declined one payment but then allowed further payments to go through afterwards and that, if it had concerns about fraud, it shouldn't have allowed further payments to go through. And I agree that, if Santander had fraud concerns, it shouldn't have allowed further payments to go through until it had satisfied those concerns.

But Santander's records show that the only payment that hasn't been refunded was made before the payment it declined. And while I appreciate the payments show in a different order on Mr H's statements, I'm satisfied Santander's records show the correct order in which the payments were requested. So, even if Santander should have done more before allowing later payments to go through, it wouldn't have affected the first payment. And the payments made after the declined payment have all been refunded or returned to Mr H's Santander account – so he hasn't suffered a loss as a result of them. And so I don't think it would be fair to require Santander to refund anything further.

Mr H also argued that the use of an overdraft was unusual for his account, and that he should have been alerted when the balance of his account went below a certain level – which it did here. But Santander's records also show the overdraft was applied for after the first payment was requested – so it wouldn't have affected its assessment of whether that payment was unusual. And the balance of Mr H's account only went below the level at which he asked to be alerted once several of the payments had been made – so this also wouldn't have affected the first payment.

So I still wouldn't have expected Santander to have identified that Mr H could be at risk of fraud as a result of the first payment of £1,970, or to take any further steps or carry out any additional checks before allowing it to go through.

Recovery

We expect banks to take reasonable steps to try to recover the money their customers have lost, once they are made aware of a scam.

But, from the evidence I've seen, the funds from this first payment of £1,970 were removed from the account they were sent to before Santander was made aware of the scam. And so I don't think anything I would reasonably have expected Santander to do would have recovered any more of Mr H's money.

I sympathise with the position Mr H has found himself in, and I recognise that my decision will come as a disappointment to him. But I can only look at Santander's responsibilities here

and, for the reasons set out above, I don't think anything I would have expected Santander to have done would have prevented the loss he suffered. So I don't think it would be fair to require Santander to refund anything further.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 August 2024.

Alan Millward
Ombudsman