

The complaint

Mrs B complains that Santander UK Plc (“Santander”) is refusing to refund her the amount she lost as the result of a scam.

Mrs B is being represented by a third party. To keep things simple, I will refer to Mrs B throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won’t repeat what happened in detail.

In summary, Mrs B did some online research into investments and came across a company that I will call B. After doing some research that B was a legitimate company and checking that B was regulated, Mrs B opened an account on B’s platform. Having provided her personal identification documents she was able to perform trades after being given advice from B’s agents using its platform.

Mrs B made payments into the scam via her account held with Santander using her debit card. She made a number of payments totalling over £400,000 between April 2018 and February 2020.

Mrs B says initially her investments did quite well and during the time she invested with B she was able to make small withdrawals - which added to her confidence that B was legitimate.

Mrs B was then no longer able to access the trading platform in mid-2020 and a few years later she realised that she may have been scammed.

Our Investigator considered Mrs B’s complaint and didn’t think it should be upheld. Mrs B disagreed so this complaint has 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.

It has not been disputed that Mrs B has fallen victim to what appears to be in hindsight a cruel scam. The evidence provided by both Mrs B and Santander sets out what happened. What is in dispute is whether Santander should refund the money Mrs B lost due to the scam.

It has been accepted that Mrs B authorised the payments that were made from her account with Santander, albeit on B’s instruction. So, the starting point here is that Mrs B is responsible.

However, banks and other Payment Services Providers (PSPs) reasonably should have systems in place to protect against the risk of financial loss due to fraud and to guard against money laundering.

The question here is whether Santander should have been aware of the scam and stepped in and questioned Mrs B about the payments she was making. And if it had questioned Mrs B, I would then need to consider if Santander would've been able to prevent the scam taking place.

In this instance I think it is clear that Santander should have intervened and questioned the payments that were made more than it did. But had this taken place I don't think that it would have changed Mrs B's decision to carry on with the transactions. I also don't think it would have been apparent to Santander that Mrs B was being scammed.

I say this because firstly, B was regulated in another country but it did have passported rights to offer financial services to UK customers. The FCA also didn't publish a warning about B until 1 June 2020, which is after Mrs B made all of her payments. Therefore, this warning would not have been available at the relevant time.

So, at the time the payments were made, B seemed to be a legitimate company that was appropriately regulated in the UK. Therefore, had Santander intervened and asked what the payments were for more than it did, the answers that Mrs B would've likely provided would not have alerted Santander that the payments being made were part of a scam.

This is demonstrated when Santander did intervene during a payment in January 2020. I have listened to the call in question and Mrs B was warned that B may be a scam but it did not know for sure. The staff member at Santander encouraged her to do her own research before continuing to make the payments. I note that possibly Santander could have asked more questions but overall, as B was regulated, there were no official warnings online at the time and Mrs B had made some withdrawals, I don't think that any further questioning would have led Santander to have become aware that she was being scammed.

Given this and given that Mrs B carried on with the transaction despite being given a general warning, I don't think that a further intervention or more questioning would have changed Mrs B decision to carry on with the transactions in questions.

Mrs B's representative seems to be under the impression that the bank ought to carry out research for its customers when it pauses a payment that looks suspicious. But that isn't reasonable. We would expect banks to educate a customer on the steps they can take – such as carrying out further research – to ensure they are dealing with a legitimate trader and provide a scam warning if necessary. I should clarify though, that Santander does not have a duty to prevent Mrs B from making a bad bargain or indeed to provide financial advice in relation to transactions like this.

So overall, whilst I think that Santander should have intervened and questioned the payments that Mrs B made more than it did, I don't think it would have been apparent that Mrs B was being scammed. In the circumstances, I don't think even if Santander had intervened more than it did that it would have prevented Mrs B from carrying on with the payments in question.

Recovering the payments Mrs B made

Mrs B made payments into the scam via her debit card. When payments are made by card the only recovery option available to Santander is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Unfortunately, Mrs B made her complaint to Santander well outside of the allowed time to raise a chargeback. So, this delay has unfortunately led to Santander not being able to process a chargeback claim for Mrs B's payments.

I have also considered whether Mrs B should receive a refund for the payments she made into the scam under the Contingent Reimbursement Model (CRM) Code. But the CRM code doesn't cover payments made by debit card, so it would not apply.

With the above in mind, I don't think Santander had any recovery options available to it for the payments Mrs B made.

I appreciate this will likely come as a disappointment to Mrs B, and I'm sorry to hear that she has lost a significant amount of money. However, in the circumstances, I do not consider it would be fair and reasonable to hold Santander liable for her loss.

My final decision

For the reasons given above, I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 21 March 2024.

Charlie Newton
Ombudsman