

The complaint

Mrs J complains that Santander UK Plc won't refund all the money she lost after she fell victim to a scam.

What happened

Mrs J was planning a trip abroad and found a travel agent who could organise it for her. The agent was arranging flights, accommodation, transfers and visas for Mrs J. She paid an initial deposit of £500 via bank transfer from her Santander current account on 26 February 2023, and then paid the balance of £3,560 with her Santander credit card on 28 February. As the travel date approached Mrs J was concerned that she hadn't seen any confirmation of flights. She says that when she checked with the airline she discovered that her flight booking had been cancelled. Mrs J says she has not been able to make meaningful contact with the travel agent since then. She considers that she has been the victim of a scam and reported this to Santander.

Santander is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code (the "CRM Code"). The CRM Code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances. Santander looked into Mrs J's complaint and upheld it in part.

In summary, it said it did not do enough to highlight the risk of the deposit payment Mrs J made, but it also thought Mrs J could have done more to verify the third party she made the payment to. Based on this it agreed to refund half of the £500 deposit Mrs J had made. It was also able to recover £45.60 of this amount from the recipient account, and those funds were also returned to Mrs J. But Santander went on to explain that the credit card payment couldn't be considered under the CRM code. It didn't think it was liable for this payment as Mrs J had authorised it.

Santander did though raise a chargeback with the card issuer regarding this credit card payment. But the merchant defended the claim, saying that Mrs J had cancelled the holiday when it could not move her flights, and that its terms and conditions said it would not offer a refund in those circumstances. Santander decided not to pursue the chargeback any further, and so Mrs J remained liable for the £3,560 credit card payment.

Unhappy with Santander's response, Mrs J brought her complaint to this service. One of our Investigator's looked at it, they thought the complaint should be upheld in part. In summary, they thought Santander should refund the deposit payment in full, as they considered Mrs J had a reasonable basis for believing the payment was legitimate. But the Investigator did not consider that they could reasonably ask Santander to refund the credit card payment as it was not covered by the CRM Code and they felt Santander had acted reasonably in not deciding to pursue the chargeback any further.

Mrs J didn't agree with our Investigator's view, so as no agreement could be reached the complaint has been passed to me for a decision.

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 agree with the findings set out by our Investigator, and for the same reasons.

In doing so, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

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. However, where the customer made a payment because of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

The Lending Standards Board's Contingent Reimbursement Model code ("the CRM code") is of particular significance here. It requires its signatories to reimburse customers who are victims of scams like this one in all but a limited number of circumstances, and Santander is a signatory of the Code. Not all types of payments are covered by the Code, and in this case only Mrs J's initial deposit, which was made via faster payment, is covered by the Code. When considering that payment under the rules of the Code, Santander says that one of the relevant exceptions is applicable in this case.

Specifically, Santander has said that Mrs J made the payment without having a reasonable basis for believing that: the payee was the person she was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom she transacted was legitimate.

I've considered the facts of this case carefully and I'm not persuaded that this exception is applicable here. Mrs J was using what she believed to be a legitimate travel agent which had a professional looking website, the amount she was paying for the package was reasonable, and Mrs J had booked holidays in this way before. In the circumstances of this complaint, I consider that Mrs J was reasonable to believe that she was making a legitimate payment. And given that Santander has confirmed it did not provide any effective warnings regarding this payment, it follows that Santander should refund the full value of this payment to Mrs J, minus any amount already refunded or recovered from the recipient bank.

Unfortunately though, the credit card payment Mrs J made does not fall within the scope of the CRM Code. And it's not disputed that Mrs J authorised this credit card payment. So as per the Payment Service Regulations 2017 that means Mrs J is responsible for it. That remains the case even though Mrs J appears to have been the unfortunate victim of a scam.

So the starting position is that Mrs J is liable for this payment and Santander doesn't have to refund the money she lost. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether Santander acted fairly and reasonably in its dealings with Mrs J regarding this payment, or whether it should have done more than it did.

But looking at the way Mrs J generally used her credit card account, I don't think the disputed payment stood out as unusual enough to warrant any intervention from Santander. Mrs J had made payments for similar amounts before, and for similar reasons, so I can't see that the payment would reasonably have been flagged as unusual or potentially suspicious by Santander. It follows that I don't consider Santander missed an opportunity to prevent this payment.

I have though considered whether Santander could have done more to try to recover the money Mrs J lost once it was clear that she was the victim of a scam. This service expects a business to take reasonable steps to try to recover the money from the bank it was sent to.

In respect of the faster payment, Santander has shown us that it contacted the beneficiary bank (the bank to which the money was sent) soon after it was notified of the scam, and was able to recover a small amount.

When it comes to the credit card payment, chargeback is the way in which payment settlement disputes are resolved between card issuers and merchants. They are dealt with under the relevant card scheme rules, in this case that's Mastercard. In certain circumstances the process provides a way for Santander to ask for a payment Mrs J made to be refunded. There is no obligation on a card issuer to raise a chargeback, nor does the raising of one guarantee a refund for the card issuer's customer. But I would consider it good practice for a chargeback to be attempted where the right exists and there is a reasonable prospect of success. And, in this case, Santander did raise a chargeback once Mrs J reported that she had been the victim of a scam.

When a card issuer raises a chargeback this can be defended by the merchant. When this happens the card issuer can choose to present the chargeback for a second time (pre-arbitration) or choose to not pursue matters any further. In this case Santander raised a dispute, the merchant defended it, and Santander chose, at that stage, not to pursue the chargeback any further. This was because, having considered the merchant's defence to its chargeback attempt, it felt the claim had no reasonable prospect of success.

I appreciate Mrs J won't agree, but having considered all the available evidence I don't think Santander's decision to not pursue matters further was unreasonable or unfair. The merchant provided some evidence to support their assertion that the holiday had been booked and said Mrs J had then cancelled it. While Santander was aware that Mrs J may have been the victim of a scam, I don't think it was unreasonable for it to decide that the evidence it had seen didn't suggest any further pursuit of the chargeback would be successful. I acknowledge that Mrs J feels that the merchant has not been truthful, but that is not what I need to make a finding on here. My role is to determine whether it was reasonable for Santander to decide not to pursue the chargeback any further, and I think it was reasonable for Santander not to do so in the circumstances of this case.

I know this will be very disappointing for Mrs J, and I can understand why she feels the way she does, but with all I've seen I'm satisfied that while it would be fair for Santander to refund the remainder of the deposit Mrs J paid, I can't reasonably ask it to refund the credit card payment to her.

Putting things right

To resolve this complaint Santander UK Plc should;

- Refund Mrs J the remainder of the money she lost as a result of making the faster payment.
- Pay interest on that amount, at 8%, calculated from the date Santander originally declined Mrs J's claim until the date of settlement.

My final decision

I uphold this complaint in part. Santander UK Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 4 April 2024.

Sophie Mitchell
Ombudsman