

The complaint

X complains that Santander UK Plc didn't do enough to protect him from the financial harm caused by a scam, or to help him recover the money once he'd reported the scam.

What happened

In March 2023 X was looking for flights for him and his father to and from the country where X's father lived. X was contacted by someone who said they worked for a travel agency, I'll call this person B. They said they could provide X with discounted flights. X agreed a price for the flights – £2,400 – and gave B his card details to pay for them. Over two days three payments were then taken from X's account using his card details. One of these payments appeared to be to the travel agent, and the other two were to an online retailer which sold flights.

But X was suspicious of some of the paperwork B had sent him and contacted the airline he thought his flights were with to check they had been correctly booked. Unfortunately, X discovered that no flights had been booked, so he contacted B. B initially promised a refund, but this never materialised, and ultimately X was left out of pocket and with no flight booking. It appears that B was a scammer, impersonating a legitimate travel agent.

X contacted Santander and told it what had happened. X said that he had not authorised all the payments B took, and that he had not received the flights he had paid for. Santander raised chargebacks for the disputed payments, and temporarily credited X's account with the disputed payments while it looked into things. The chargeback was successful for one of the payments made – the £522 to the travel agent on 22 March 2023. But the chargebacks for the other two payments were unsuccessful, the merchant those payments were made to provided evidence that it had booked flights as requested, although those flights were not in X's or his father's name, or to the destination they had asked for. It seems B had used X's funds to buy flights for a third party.

Santander declined to pursue the chargebacks any further, and so re-debited these two payments from X's account. X was unhappy with this, particularly as the re-debit of the funds pushed his account into an overdraft, and so he referred his complaint to our service.

One of our Investigator's looked into what had happened and, ultimately, they found that Santander had treated X fairly here. They noted that, given what the merchant had said, there was no reasonable prospect of the chargebacks being successful. So, they did not consider that Santander had acted unfairly in declining to pursue the chargebacks any further. They also did not consider that Santander could have done anything to help prevent this scam, or that X had been provided with poor customer service regarding his claim.

X disagreed, so as no agreement could be reached this case has now been passed to me for review.

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've reached the same conclusion as our Investigator, and for the same reasons.

I note that X has suggested that he did not authorise the second and third payments made as a result of this scam, but Santander has said that these payments were authorised via a notification in X's banking app. I'm also aware that X was expecting to pay a total of £2,400 for the flights – and the payments taken using his card add up to much less than that amount. So, with this in mind I'm satisfied that X more likely than not authorised the payments himself as he thought he was dealing with a legitimate travel company.

Broadly speaking, the starting position in law is that Santander is expected to process payments and withdrawals that X authorises it to make, in accordance with the terms and conditions of the account. And X will then be responsible for the transactions that he has authorised.

Because of this, X is not automatically entitled to a refund. 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.

As I'm satisfied the disputed payments were made to a scam, I've thought about whether Santander could have done more to prevent the scam from occurring altogether. Santander ought to fairly and reasonably be alert to fraud and scams, so I need to consider whether it ought to have intervened to warn X when he tried to make the payments. But considering the value and nature of the payments, in the context of X's account, I don't think there was anything that should have flagged to Santander that X might be at risk. The payments were to a legitimate business and were of relatively low value – comparable to how X usually used his account – so I don't think Santander missed an opportunity to intervene. And X only notified Santander of the scam after the payments had been made, so given that they were card payments, there was no way that Santander could have stopped the payments from leaving X's account at that stage.

Because of this, even though I accept X was the victim of a scam, I don't think Santander could have done anything to prevent his loss and I'm satisfied it's decision not to refund the money he lost to the scam was fair.

I have though considered whether Santander could have done more to try to recover the money X lost once it was clear that he was the victim of a scam.

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 X 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 chargebacks for the disputed payments once X reported that he 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 disputes for three payments. The merchant for the £522 payment appears to have not successfully defended it, so this payment was refunded to X. But the two payments for £326.98 and £329.98 were successfully defended by the merchant, and Santander chose, at that stage, not to pursue the chargebacks any further. This was because, having considered the merchant's defence to its chargeback attempts, it felt the claim had no reasonable prospect of success.

I appreciate X 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 evidence to show that flights had been booked and provided. While Santander was aware that X 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 X did not receive the flights he had paid for, but the merchant did provide the service it had been asked to provide, and with that in mind I can't see how any further pursuit of the chargebacks would have been successful. There is no doubt that X was the victim of a scam, but that does not mean that the merchant – or Santander – is responsible for his loss in the circumstances of this case.

Finally, I accept X's account was left in overdraft when Santander re-debited the disputed payments from his account, but the letters it sent to him regarding his claim made it clear that the funds would be re-debited. I don't think there was anything else it could reasonably have done to put X on notice that the funds would be debited from his account if his claim failed. So I don't think it is responsible for the fact X's account then went into an overdrawn position.

I appreciate that this will be very disappointing for X, and I can entirely understand why he feels the way he does, but with all I've seen I don't consider that I can fairly say Santander should be held liable for X's loss or that it could have done more to recover his funds.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 11 April 2024.

Sophie Mitchell
Ombudsman