

The complaint

Mrs B complains that Santander hasn't refunded her after she reported falling victim to a scam.

What happened

The circumstances here are well-known to both parties and so I'll summarise the key events, rather than give a detailed background.

Mrs B wanted to book a holiday and found a travel agency (which I'll refer to as S) online. She got in touch and agreed an itinerary and a price.

Mrs B first made a card payment of £1,002.99 over the phone, which went to a merchant that wasn't S. She then paid a further £3,200 by faster payment (bank transfer), using the account details she'd been provided. All appeared to have gone through ok and Mrs B received the relevant details from S.

But when Mrs B tried to check-in the night before the flight she was unable to do so. She contacted S (as well as the airline and hotel providers) and was told there was no trace of her booking.

Mrs B raised a scam claim with Santander, but it said it wouldn't refund the loss. It said Mrs B appeared to have a civil dispute with S, given it was a genuine travel agency. In answering Mrs B's complaint, it mistakenly told her she was to be refunded in full. Santander later apologised and said it had accidentally written to Mrs B with the outcome of a different customer's complaint. As Mrs B was unhappy with the outcome she brought her complaint to this service.

Mrs B has discussed what happened with S. It's unclear what its take on the situation is. But it has confirmed it has Mrs B's money and no record of any booking. It agreed to return the money if such a request was received via Santander.

One of our investigators considered what had happened and recommended the complaint be upheld in part. She felt the bank transfer of £3,200 failed to meet the definition of an APP scam and was instead a civil dispute between Mrs B and S.

She did ask Santander to refund the card payment on the basis it ought to have raised a chargeback at the time the issue was reported. Santander agreed to do so. It also agreed to pay £100 for the mistake it made sending Mrs B the wrong outcome letter.

Our investigator also recommended Santander pay 8% simple interest on the card payment refund, calculated from the date the chargeback ought to have been raised. Santander disagreed as it said the success of the chargeback wasn't guaranteed and neither was the timeframe for a refund.

Mrs B didn't want to accept the outcome as she felt she should receive all her money back.

As an agreement hasn't been reached the complaint has been passed to me for a final 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.

I'm upholding Mrs B's complaint in part, reaching the same outcome as our investigator and for broadly the same reasons.

There's no dispute that Mrs B authorised the two payments that are the subject of this complaint. She authenticated and consented to the payments and so, under the Payment Service Regulations (2017), is responsible for them. That remains true even where goods or services haven't been received and also where a scam has taken place.

But there are other considerations that apply. Those considerations differ for the two payments, and so I'll address each separately.

The card payment

Santander has agreed to refund the card payment and so I don't intend to say much about it. There simply isn't a substantive dispute outstanding here.

Santander agreed to refund the card payment as it recognised it ought to have raised a chargeback when the matter was first reported. The only aspect it's disagreed with, in terms of our investigator's findings, is that it shouldn't have to pay interest on the refund.

But where it's been agreed there was a reasonable prospect of success and, given Mrs B clearly didn't receive what she'd paid for, it is fair and reasonable for Mrs B to be compensated for the time she's spent without the money.

That time doesn't start from the point the transaction was made. Instead, it's from when Santander ought to have acted to correct the loss.

Our investigator correctly identified that when a chargeback is raised a firm like Santander would apply a temporary credit to an account. That is best practice. It's only if a chargeback is then successfully defended that the credit would be reversed. It otherwise remains permanent. So Santander should pay interest on the card payment refund from the date she raised the claim until the date of settlement.

Santander has also said it doesn't think it should pay this interest on top of the £100 agreed for distress and inconvenience. I don't find the two are mutually exclusive. It's clear Santander made an error – in sending incorrect claim outcome letters to Mrs B – that understandably caused confusion, distress, and annoyance. I'm then satisfied the £100 compensation ought to be paid in addition to the interest award.

The bank transfer

I would only be able to say Santander should refund the bank transfer if I were completely satisfied a scam had taken place. In that scenario the provisions of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code would kick in. The Code looks to see the victims of scams refunded in most circumstances.

But the wording of the Code is very clear where it sets out that it isn't in place to cover civil disputes, including where goods and services haven't been received from a genuine merchant.

Mrs B's case is a strange one. It's not entirely clear what has happened here as S is clearly a genuine merchant. It's long-established, files accounts with Companies House, and has a long-running account held with a different bank. It's also the merchant Mrs B believed she was dealing with and who she intended to pay. But then it's also clear Mrs B hasn't gotten what she paid for.

Mrs B's communications with S show that it can't explain what has happened either. It seems there may have been a rogue agent involved, but that's not something I can get to the bottom of.

What is particularly telling, and very persuasive in terms of my findings, is that S has confirmed it has Mrs B's money and is willing to return it. It's only the method by which it makes such a refund that seems to have prevented it from happening, with S saying it requires the request to come from Santander.

I can see Santander has tried to facilitate that repayment, but S has still declined to make the refund. My findings aren't against S and this service has no remit to investigate it. But it seems to me its actions aren't fair here; there's nothing preventing it from repaying Mrs B. I'm then satisfied that Mrs B has a dispute with S and that her claim doesn't meet the definition of an APP scam. That means I can't tell Santander it needs to bear responsibility for her loss and refund her.

Putting things right

Santander should, where it hasn't already done so:

- Refund the card payment of £1,002.99;
- Pay interest on that amount at 8% simple per year, calculated from the date the claim was raised to the date of settlement;

Pay £100 in compensation for distress and inconvenience suffered by Mrs B

.My final decision

I partially uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 25 March 2024.

Ben Murray
Ombudsman