

The complaint

Mrs G has complained about a payment that was taken under a continuous payment authority in December 2019 when Mrs G signed up to receive coins from a company claiming to be a coin specialist.

Mrs G is represented by her two daughters. They feel this particular payment is a duplicate payment and has been taken fraudulently. They also feel all the payments taken under the continuous payment authority should have been questioned by Santander before leaving the account.

What happened

I'm not going to cover all the points raised in detail. The view of 7 May 2021 covered the timeline of the transactions and the details of Mrs G's testimony. In summary, our investigator did not uphold the complaint. She considered the complaint was a civil dispute between Mrs G and the seller. She also explained that due to passage of time, it was not possible to raise a chargeback for the disputed payment.

Mrs G's representatives didn't agree. They feel their mother was the victim of a scam and there were valid reasons why they could not have raised a chargeback on the disputed payment sooner.

I issued my provisional decision on 2 August 2021 explaining why I was thinking of the same outcome as the investigator but explained my reasoning - which was slightly different.

Santander has confirmed it has nothing further to add. Mrs G's representatives have nothing further to add.

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 neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

I'm aware that I've summarised this complaint in far less detail than Mrs G's representatives have presented to us, but I have read all of their submissions. I'm not responding to every single point made but instead I've concentrated on what I think are the key issues material to the outcome of his complaint.

I am sorry to hear what has happened to Mrs G in this case. It is sometimes difficult to separate civil disputes from scams especially when goods are received, as was the case here. However, there are a few things that concern me about the 'merchant' in this case.

As Mrs G's representatives have pointed out, the "merchant" is not registered on companies' house. They also say the invoices (which were provided for each coin purchase) did not look

professional and I note the invoice has an address but no company registration number. I've also discovered through the internet there are over 400 companies registered to the same address as the merchant purports to be at, but the company itself was not listed amongst them. Although Mrs G hasn't been able to provide any supporting evidence about how the 'scam' unfolded, I have noted what Mrs G's representatives have said about their mother receiving unsolicited calls and that they feel she was socially engineered and/or befriended by a man. I have also noted Mrs G's age and vulnerability. Taking everything into consideration I believe that, on balance, there was intent to defraud in this case.

It is not in dispute that Mrs G authorised the payments. But I do feel she was likely duped by a scammer into setting up a continuous payment authority for them to debit her account. It appears that the scammer socially engineered Mrs G during a number of unsolicited phone calls into agreeing to purchase some coins.

I therefore accept that this was an 'authorised payment' even though Mrs G was likely the victim of a scam. She provided the scammer with a continuous payment authority. So, although she did not intend the money to go to scammers, under the Payment Services Regulations 2017, Mrs G is presumed liable for the loss in the first instance.

However, in accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. Amongst other things, this might involve a bank looking to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.

Accordingly, I first need to determine whether Santander breached that duty when executing Mrs G's payment for £405.99 and any subsequent payments.

Most of the previous activity on Mrs G's account in the 6-month period before the scam related to direct debits and card payments. From what I can see, Mrs G hadn't made similar payments in recent times.

I appreciate this payment was not in line with Mrs G's everyday activity and I note the investigator said there 'may be' an argument that the first payment should have flagged as unusual. But I've thought carefully about whether the payment was particularly suspicious such that Santander should have been alerted to the possibility Mrs G might have been at risk of financial harm and so therefore questioned her further.

However, I'm not persuaded that it's reasonable to expect Santander to have intervened in this case. The balance in Mrs G's account wasn't cleared and I'm not persuaded that based on the size of the payment that there was enough suspicion about it that I would've expected Santander to pause before processing the payment.

There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. Of course, those arrangements do need to accommodate that spending habits alter, unusual needs arise, and it will be impossible to prevent all fraud without a significant number of genuine payments being delayed considerably and inconveniently. It remains that the payment wasn't fraud on the account itself. To the bank, it was a genuinely authorised payment. On the face of it, it seems to me that there was no reason why the payment wouldn't have seemed genuine.

I appreciate Mrs G's representatives' main dispute is around the second payment of £405.99 which came out of Mrs G's around two weeks after the first payment of the same

amount. They now say no coin was received for this payment and therefore this is a duplicate payment.

Mrs G and her representatives went into branch on 7 March 2020 and requested that no more payments be taken by the merchant. They say they did not raise a chargeback on that visit because they did not have enough time that day to check how many coins Mrs G had received in relation to each payment. A week later they could only find three coins even though four had been paid for. But they say they did not spend a long time looking for other coins that day as Mrs G's sister in law had recently passed away and Mrs G was very upset and grieving. Then the country went into national lockdown, so the daughters could not easily look for the missing coin as they are not local to Mrs G and restrictions were in place.

However, as the investigator explained the chargeback rules are absolute in relation to time frames. Also, chargebacks are decided based on the card scheme's (VISA - in this case) rules. VISA sets the time limits not Santander and those time limits need to be adhered to strictly. So, if a cardholder doesn't raise a query or provide documents to the card issuer in time, then there's not really anything more the card issuer can do. It is also worth noting that a chargeback is not guaranteed to recover money.

I'm very sorry, as I know this will be disappointing news for Mrs G and her daughters; who have clearly put in time and effort into pursuing this complaint. Despite my natural sympathy for Mrs G, who appears to have been an innocent victim of a scam, it would be unfair and unreasonable to hold Santander liable for payments which, under the Regulations, Mrs G must be regarded as having authorised.

My final decision

For the reasons above, my final decision is I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 15 September 2021.

Kathryn Milne
Ombudsman