

The complaint

Mr M complains that Santander UK Plc won't refund several card payments he says he made and lost to a scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows.

Mr M complains that from 19 November 2018 he made eight debit card payments from his Santander account to what he thought was a legitimate investment company. Each payment carried an accompanying foreign currency purchase fee of £1.25, taking the total amount paid to £13,868.24. And they appeared (excluding the foreign currency purchase fees) on Mr M's account as follows.

Payment number	Date	Amount
1	19 November 2018	£2,734.85
2	19 November 2018	£2,279.05
3	19 November 2018	£2,279.05
4	19 November 2018	£227.90
5	13 February 2019	£963.21
6	13 February 2019	£963.21
7	13 February 2019	£762.54
8	01 June 2019	£3,648.43

Mr M says he was told by a friend about an investment opportunity in cryptocurrency that was backed by gold. Mr M says he set the account up online and started to send the payments.

When Mr M didn't see any returns in 2023, he logged a claim and complaint with Santander.

Santander looked into the complaint but didn't uphold it. It said Mr M was over the 540 days he had to raise a chargeback. Mr M remained unhappy, so he brought his complaint to our service.

Our investigator looked into the complaint but didn't think it should be upheld. Our investigator found Santander should've flagged the first payment and reached out to Mr M to complete further checks but didn't find these would've stopped Mr M making the payments.

Mr M didn't agree with the investigator's view, so the complaint's 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 sorry if Mr M lost money to a scam but this doesn't automatically entitle him to a refund from Santander. It would only be fair for me to tell Santander to reimburse Mr M if I thought it reasonably ought to have prevented the payments or it unreasonably hindered recovery of the funds.

Prevention

I'm satisfied Mr M authorised the relevant payments. Santander would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Mr M is presumed liable for the loss in the first instance, in circumstances where he authorised the payments. That said, as a matter of good industry practice Santander should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect Santander to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments (allowing customers ready access to their funds).

In this case there appears there was a warning on a central database about the company Mr M sent the payments to, which I think most likely ought fairly to have triggered Santander's payment warning system. So, I think Santander ought to have intervened in the payments (or at least some of them) and called Mr M to warn him or otherwise check everything was in order. But here, I'm not persuaded, even if Santander had intervened like this, that it's most likely this would have prevented Mr M's loss. I say this because Mr M told our investigator that even if Santander had asked him questions about the payments and told him he might be being scammed, he would've likely still sent them. I'm also persuaded, much like the investigator, that if Mr M had gone away to think about the payments and seek advice, it's likely it would've been his friend, who had told him he had already invested, that he would've turned to and asked, who I think most likely would've reassured him everything was fine. I've thought carefully about whether I nonetheless think the level of intervention I'd reasonably have expected from Santander in the circumstances of this case ought reasonably to have resulted in the payments being prevented. And I can't be certain about this. But all things considered, in the individual circumstances of this case, I'm satisfied that any proportionate intervention *most likely* wouldn't have made a difference to Mr M ultimately sending and losing this money to the scam.

Recovery

After the payments were made, as they were made by debit card the only potential avenue for recovery of the payments would have been through the chargeback scheme. The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. Santander is bound by the card scheme provider's chargeback rules. Whilst there is no 'right' to a chargeback, I generally consider it to be good practice that a chargeback be raised if there is a reasonable chance of it succeeding. But a chargeback can only be made within the scheme rules, 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. And in this case as Mr M's payments were made well-over 540 days before Mr M notified Santander he'd been scammed, I'm satisfied that by then that the chargeback route was no longer available. So,

I'm satisfied I can't reasonably say Santander unreasonably hindered recovery of the payments after they were made.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 March 2024.

Tom Wagstaff
Ombudsman