

The complaint

Mr L complains that Santander UK Plc ('Santander') won't refund the money he lost in a scam.

What happened

Mr L says that he had a guitar and keyboard up for sale on an online marketplace. The total cost of the two items was £220 and Mr L required any buyer to collect the guitar and keyboard from him and to pay in cash. Mr L received messages via the marketplace from individuals who said they wanted to buy the items. Mr L didn't know at the time, but both of the buyers were scammers.

Each of the scammers asked Mr L to buy a gift card and provide the code to cover the cost of the delivery company's insurance. He was told that when a representative of the delivery company collected the items, he would be handed an envelope that contained the purchase price and the cost of insurance.

Mr L says he then started to receive emails and further messages asking him to buy more gift cards in respect of things like a certificate and tax. He wanted to pull out of the sales, but the scammers threatened him with a hefty fine and imprisonment if he didn't comply and told Mr L to expect the police to come to his address to arrest him.

Mr L went to the same supermarket on multiple occasions on 16 September 2023 and bought various gift cards using his debit card. Over five transactions he spent £2,200 (£100, £500, £1,000, £500 and £100).

Mr L was then asked to buy further gift cards, but the supermarket advised Mr L he was being scammed. Mr L reported what had happened to the police, who confirmed that he was the victim of a scam and that all the messages and emails he had received were from scammers. Mr L reported what had happened to Santander.

Santander said that Mr L was the victim of another scam in May 2023 and a fraud investigator discussed with him ways he could protect himself in future, but there was no evidence Mr L had completed any checks. As a result, Santander said it couldn't reimburse Mr L.

Mr L was unhappy with Santander's response and brought a complaint to this service. He said he has been a customer for over fifty years, and he expected Santander to reimburse him.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said the Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply to card payments and that the transactions Mr L made weren't so unusual that Santander ought reasonably to have intervened when they were made. And, as Mr L received the gift cards, a chargeback claim against the supermarket he bought the cards from wouldn't be successful.

Mr L didn't agree with the investigator's findings and asked for a final decision, so his complaint has been passed to me to consider. He said he had no idea he was being scammed.

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.

In deciding what's fair and reasonable, 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 have been good industry practice at the time.

I'd like to reassure Mr L that I have no doubt that he didn't realise he was the victim of this cruel scam. He has been duped into buying gift cards by unscrupulous scammers. But that doesn't mean that Santander is responsible for his loss.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

The CRM Code doesn't apply to card payments, so it isn't relevant here.

Taking into account the law, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

In this case, I don't consider Santander acted unfairly or unreasonably in processing the card payments. I don't think there was enough going on that Santander ought reasonably to have recognised that it was likely Mr L was the victim of a scam. I appreciate this will come as a real disappointment to Mr L, but I have to be fair to both parties.

Having considered the transactions on Mr L's account, I don't think the individual payments, or the total amount spent, were unusual given the normal operation of the account. Although I recognise that the overall amount lost was significant to Mr L, the value of each transaction was relatively small and in line with previous account activity, and the transactions were spread across the day. For example, Mr L made a card payment of £1,854.64 on 2 September 2023. The pattern of transactions also wasn't unusual enough to cause concern and Mr L's account balance wasn't depleted.

There's a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. Whilst banks have obligations to act in their customers' best interests, they can't reasonably be involved in every transaction. To do so would involve significant disruption to legitimate payments.

I'm afraid the fact Mr L has been a customer of Santander for some time doesn't alter anything I have said in this decision.

I agree with the investigator that Mr L doesn't have a legitimate chargeback claim as the supermarket provided the gift cards.

Overall, whilst I'm really to sorry to hear about what has happened, I can't fairly ask Santander to reimburse Mr L so I do not uphold this complaint.

My final decision

For the reasons given above, I do not uphold this complaint.

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

Jay Hadfield
Ombudsman