

The complaint

Ms Q complains that Santander UK Plc hasn't protected her from losing money to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, in August 2023 Ms Q made three payments from her Santander accounts as a result of a scam. Ms Q made two of the payments using her Santander credit card, and one further payment using her Santander debit card.

Ms Q subsequently realised she'd been scammed and got in touch with Santander. Ultimately, Santander didn't reimburse Ms Q's lost funds, and Ms Q referred her complaint about Santander to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent Ms Q and Santander my provisional decision earlier this month explaining why I wasn't minded to uphold this complaint. Now that both Ms Q and Santander have replied, I'm ready to explain why 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.

Santander replied to my provisional decision to say that it has no further comments. Ms Q replied to my provisional decision and said that the company the scammers tricked her into thinking she was dealing with posted a warning message for people that scammers were using its company logo to fraudulently impersonate its brand. And Ms Q has sent us a screenshot of this, which she's also previously sent us. I'm sorry Ms Q is disappointed with my provisional decision. However, her payments weren't made directly to the scammers in this case, so what she's said hasn't persuaded me to change my mind. Having reviewed everything again, I've reached the same conclusions as in my provisional decision and for the same reasons. I've explained why again below.

Let me say, first of all, I'm sorry if Ms Q lost money to a scam. She has my sympathy. Ultimately, however, Ms Q has suffered her loss because of fraudsters, and this doesn't automatically entitle her to a refund from Santander. It would only be fair for me to tell Santander to reimburse Ms Q her loss (or part of it) if I thought Santander reasonably ought to have prevented the payments (or some of them) in the first place, or Santander unreasonably hindered recovery of the funds after the payments had been made; and if I was satisfied, overall, this was a fair and reasonable outcome.

Prevention

I'm satisfied Ms Q authorised the relevant payments. Santander would generally be expected to process payments a customer authorises it to make. And Ms Q is presumed liable for the loss in the first instance, in circumstances where she 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).

Bearing this in mind, I need to decide whether Santander acted fairly and reasonably in its dealings with Ms Q when it processed the relevant payments. All three payments – the credit card payments for £24.58 on 22 August 2023 and £1,750 on 26 August 2023, and the debit card payment for £2,300 on 31 August 2023 – were made to OnlyChain. I think Santander ought to have realised at the time Ms Q made the payments that cryptocurrency related payments like these ones carried an elevated risk of being related to fraud or a scam. But the key question here is whether these payments were *sufficiently* unusual or suspicious for Ms Q's accounts such that intervention from Santander ought reasonably to have been warranted. As I've mentioned, there's a balance banks need to strike between identifying payments that could potentially be fraudulent and allowing customers ready access to their funds. Not all crypto-related payments are made as a result of fraud or a scam. And in this case, whilst I acknowledge Ms Q will be disappointed, I'm not persuaded the payments were sufficiently unusual in size (or otherwise) for Ms Q's respective accounts to say Santander ought reasonably to have intervened in the payments (but failed to) before it followed Ms Q's instructions to make them. This means I'm not persuaded Santander unreasonably failed to prevent the payments.

Recovery

After the payments were made, I couldn't reasonably expect Santander to have done anything further until Ms Q notified it of the scam. Then, because the first two payments were made by credit card, the two potential avenues for recovery of these two payments would have been via the chargeback scheme, and section 75 of the Consumer Credit Act 1974. And with regards to the debit card payment, the only potential avenue for recovery of that payment would have been via the chargeback scheme.

With regards to chargeback, Ms Q appears to have made the payments from her Santander credit and debit cards to OnlyChain (and not directly to the scammers). So the payments appear to have been made not for services but for goods that were received (cryptocurrency) albeit then lost to scammers. This means I don't think the merchant here, for chargeback purposes, would be the scammers. And I understand when Ms Q paid OnlyChain she received the goods intended, which was cryptocurrency. I don't think Ms Q's loss of the cryptocurrency to the scammers would give rise to valid chargeback claims through Santander. So, I don't think these payments were recoverable through the chargeback scheme by Santander once they had been made.

With regards to section 75 of the Consumer Credit Act 1974, it's my understanding that Santander didn't look into a potential claim under this for the two credit card payments because Ms Q didn't ask it to. So it wouldn't be appropriate for me to comment on this further in this decision – aside from to say that if Ms Q wishes for Santander to do so, she should let it know, and if necessary subsequently raise the matter as a separate complaint.

I understand Ms Q is out of pocket and I'm really sorry if she's lost money to a scam. However, I can't reasonably tell Santander to refund her in circumstances where I don't think it unreasonably failed to prevent the payments or to recover them as I've explained.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Q to accept or reject my decision before 26 March 2024.

Neil Bridge
Ombudsman