

The complaint

Ms K complains that Santander UK Plc (Santander) won't refund money she lost in a holiday scam.

What happened

What Ms K says:

Ms K was looking for a holiday online and found a good deal with a well-known travel firm (which I will call 'firm A'). She called the phone number shown online and agreed a price for flights and hotel. She paid £2,709.72 by debit card as shown:

Date	Payment	Amount
17 November 2023 – 13.25	Debit card	£2,709.72

Ms K gave the one-time passcode (OTP) to the call handler. She became suspicious when he asked if she had another bank account she could use to pay the final balance of £300. She then realised this was a scam and reported it quickly to Santander at 14.37.

It turned out that the holiday had been booked with firm A, but in the name of another traveller.

Ms K says Santander should've done more to protect her. She also says the bank made no attempt to get the money back; and that Santander didn't advise her of the outcome of their investigation until March 2024. In the meantime, she was left wondering what was going to happen to her claim.

What Santander said:

Santander discussed the complaint with Ms K by phone and the bank's final response referred to the call and gave referral rights to our service.

In the bank's submission to us, Santander said:

- The Contingent Reimbursement Model (CRM) code didn't apply as the payment was made by debit card.
- Ms K authorised the payment using an OTP.
- The bank tried to get a refund through the chargeback service but there wasn't enough information given by Ms K – and in any case, as the payment was made to a genuine business and the goods supplied, it wasn't likely that a chargeback claim would succeed.

Our investigation so far:

Ms K brought her complaint to us. Our investigator didn't uphold it. She said:

- The payment wasn't large enough to be considered suspicious or be questioned by Santander. Ms K regularly made debit card payments.
- The payment was to a genuine merchant (firm A), and Ms K authorised it using an OTP.
- Ms K didn't call or contact Santander at the time of the payment and so the bank didn't have an opportunity to intervene.
- Santander tried to get the money back using the chargeback process, but the rules don't cover scams; and as the holiday had been booked (i.e. the goods had been provided), the chargeback claim would fail.
- Santander completed the investigation in a reasonable timescale. She could see there had been calls between Ms K and Santander in November 2023.

Ms K didn't agree and asked that an ombudsman look at her complaint. And so it has come to me.

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.

It appears that the scammer intervened in the call by using a 'spoof' number and got Ms K to make the payment under his control. And, he made the booking with firm A in the name of another person, not Ms K. Ms K told us that she gave the OTP to the scammer.

I'm sorry to hear that Ms K has lost money in this cruel scam. It's not in question that she authorised and consented to the payments in this case. So although Ms K didn't intend for the money to be lost, she is presumed to be liable for the loss in the first instance.

So, 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. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 make 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.

I need to decide whether Santander acted fairly and reasonably in its dealings with Ms K when she made the payment, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to 'faster payments' made to a UK beneficiary – and in this case, the payments were made by debit card.

The important matter here is whether this was a payment that Santander might reasonably have considered unusual, and therefore whether they should've held or stopped the payment and contacted Ms K about it.

I looked at Ms K's account history with Santander. And she did make frequent payments by debit card, albeit usually of amounts less than the disputed payment to firm A.

But here, I must also consider that there's a balance to be made; Santander has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. And here - this was a single payment and for a relatively low amount.

Therefore, in this case, I think Santander acted reasonably in processing the payment – I don't think that I could reasonably say that Santander should have stopped the payment for further checks.

Therefore, on the main issue of whether the money should be refunded by Santander, I don't hold the bank liable.

Recovery

Santander tried to get the money back using the chargeback process, but this was always going to fail. The chargeback process is a voluntary one – customers are not guaranteed to get money refunded, and there are strict scheme rules in place by the card schemes (e.g. Visa and Mastercard) which govern chargebacks.

In general terms, the chargeback can provide a refund where a customer has bought goods or a service which isn't provided or is not what was advertised. So – that isn't the case here, as the holiday/flights were provided. And chargeback service doesn't apply where a scam takes place. This was an authorised payment and a chargeback had no reasonable prospects of success.

Recovery: I then went on to consider whether Santander could've done more to recover the money. We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Santander took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money.

I can see the payment was made at 13.05 and Ms K contacted Santander shortly after that time. I could not see that Santander contacted the recipient bank to try to stop the payment. We asked the bank more about this as I wanted to be sure the bank did what it could to try to get the money back. But here, because the payment was made by debit card, there was no point in Santander trying to get the money back – as it was a 'confirmed' payment and authorised by an OTP. As I set out, the bank did try further by using the chargeback process, but that wasn't successful.

Communications: Ms K complains that Santander didn't inform her of the outcome or progress of their investigation, I asked Santander more about this. I can see the bank concluded their investigation on 24 November 2023. There was a call on that day and I listened to it. On the call, Santander's fraud adviser said the investigation had been completed and a refund couldn't be made – because the payment had been authorised by Ms K. And I can see the bank wrote a letter to Ms K on 24 November 2023 to explain this. The adviser also said the bank would try to make a chargeback claim but there was no guarantee it would be successful.

Santander also wrote to Ms K on 12 January 2024 to say the chargeback claim couldn't be progressed any further.

So, I'm satisfied the communications were clear and timely.

I'm sorry Ms K has had to contact us in these circumstances. I accept she's been the victim of a cruel scam, but I can't reasonably hold Santander responsible for her loss.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 28 August 2024.

Martin Lord
Ombudsman