

The complaint

Mrs A complains Santander UK Plc won't refund her the full amount of money she 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.

Mrs A complains that she sent three payments of £1,360 to what she thought was a legitimate travel company for the payment of flights. Shortly after making the payments, she realised she'd been scammed. So, she logged a complaint with Santander.

Santander looked into the complaint but didn't refund Mrs A. It said one of the payments had already been refunded, so the outstanding amount was £2,720. Santander went on to say that credit card payments are not covered under the Contingent Reimbursement Model (CRM) code. Mrs A remained unhappy, so she brought her complaint to our service.

Our investigator looked into the complaint but didn't uphold it. Our investigator didn't think the payments were of a value that would trigger Santander's payment checking systems. She went on to say that Mrs A didn't have any rights under section 75 to claim the money back.

Mrs A didn't agree with the investigator's view, so the complaint's been passed to me to decide.

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 very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

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, Mrs A is presumed liable for the loss in the first instance, in circumstances where she authorised the payment. 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 a bank 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.

Having considered the size of the individual payments, I'm satisfied they were not of a value or remarkable enough to have triggered Santander's payment checking process. The payments were also spread across different days and don't show any characteristics of what we would normally attribute to a scam, like increasing in value.

So, I don't find Santander did anything wrong when they didn't stop Mrs A's payments.

Recovery

After the payments were made, as they were made by credit card the only potential avenue for recovery of the payments would have been through the chargeback scheme or a Section 75 claim.

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.

In the circumstances of this complaint, the company where the money was sent to, no longer exists. So, I'm satisfied that a chargeback wouldn't have any prospects of success.

Section 75 makes the provider of credit (Santander in this case) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, it will only apply when there is a direct relationship between the debtor, creditor and supplier.

In this case I am not satisfied that a valid 'debtor-creditor-supplier' relationship exists. The credit card statement shows the card payments was not made directly to the company Mrs A thought was supplying the flights, or the flight company itself. The payment was made to another party. Therefore, I'm satisfied that there is no valid 'debtor-creditor-supplier' relationship between the parties and no right for Mrs A to make a claim under section 75.

Because there is no valid 'debtor-creditor-supplier' relationship, section 75 does not apply. It follows that Santander is not liable under section 75 for any claim for misrepresentation or breach of contract against the company where the payments were sent.

Mrs A has sent evidence showing that many of the other banks involved in the booking process, have refunded her money under various claims. I understand why Mrs A has sent this, but each case is dealt with under its own set of circumstances. I can also see that many of the merchants used to receive the payments were different. And although I know it will disappoint Mrs A, in the case of Santander, I haven't found it's done anything wrong for the reasons I've given above.

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 Mrs A to accept or

reject my decision before 20 April 2025.

Tom Wagstaff
Ombudsman