

The complaint

Mr H complains that Santander UK Plc (“Santander”) won’t refund a payment he didn’t make or otherwise authorise.

What happened

The full details of this complaint are well known to both parties and have been previously set out by the investigator. So, I won’t repeat them again here. Instead, I’ll recap the key points and focus on giving my reasons for my decision.

- In August 2023, Mr H and his wife attended a virtual meeting with an estate planning company, “X”. He states they agreed to a free consultation, but the meeting lasted for over two hours and was a very pressured environment. Mr H says X asked for his wife’s card details, and she provided the long card number on the front of *his* cahoot credit card which is provided by Santander. Mr H states he and his wife assumed the credit card might be used if they went ahead with anything. Subsequently, a payment of £1,500 was taken from his credit card.
- Mr H reported the transaction to Santander and said the money was taken without his permission. He told the bank that he’d contacted X for a refund, but it had been refused. Santander requested additional information from Mr H before it could dispute the payment with X. But Mr H said he hadn’t received any documentation from X, so he couldn’t provide any paperwork the bank had requested. Santander declined to refund the disputed transaction.
- Mr H made a complaint which was then referred to our service. Our investigator thought that Santander hadn’t done anything wrong in treating the payment as authorised. The investigator also considered whether the bank did all it could to recover Mr H’s money after he disputed the payment. They concluded that it wasn’t unreasonable that Santander didn’t pursue recovery given the lack of documentation to support what the agreement was.
- Mr H didn’t agree with the investigator’s findings.

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’d like to start by thanking the parties for their continued patience while awaiting an ombudsman’s review of this complaint.

When a payment is disputed, the starting point in law is that the payment service user (here Mr H) is liable for payments that they authorised, and the payment service provider (here Santander) is liable for unauthorised payments.

Under the relevant law (the Payment Service Regulations 2017 – PSRs), a payment is authorised if it is correctly authenticated and consented to by the consumer, or by someone else on their behalf. The PSRs say that consent must be given in accordance with the form and procedure agreed between the payment service user and the payment service provider.

Here, the relevant framework contract are the terms and conditions applicable to Mr H's credit card. In order for the disputed payment here to be authorised, Mr H or Mrs H (on behalf of Mr H) would need to have given consent as set out in the terms.

The credit card terms applicable at the time state the following:

“2.1 Using your card:

...

- (d) ... You will authorise a transaction by giving your consent. This can be done in any of the ways we tell you about from time to time including using your cahoot credit card or PIN, providing your card details online or over the phone, signing a paper voucher or using a device on which your card details have been loaded. Where the transaction is made without you being present, for example by online banking or by phone, you give your consent by giving the card number and other details requested by the person that you are paying or by using your card and PIN at a cash machine.”*

In this case, Mr H has told us that his wife provided his card number to the scammer. The technical evidence Santander has provided shows that the transaction was approved using the card details (long card number, CVV, and expiry date). Mr H submits that besides the long card number, no other details were disclosed to X. But it's unclear how X could have obtained other details of Mr H's card without these being shared.

I also note that at one point, while responding to Santander's request for further information, Mr H acknowledges paying a deposit of £1,500 towards X's fees and deciding to cancel its services within 24 hours. On balance, I think it's likely that all of the card details were provided to X to enable a payment to be made. And from what Mr H has said, it appears it was a deposit to secure specific services.

As Mr H (through Mrs H) provided his consent to the execution of the transaction in accordance with the terms and conditions of his credit card, under the PSRs the transaction would be considered authorised. I acknowledge that Mr H says he and his wife felt pressured. But based on the steps they took, I'm persuaded that the transaction was authorised. And so, the starting position is that Mr H would be considered liable for the payment in dispute.

There are circumstances when it might be appropriate for payment service providers to take additional steps before executing a payment transaction. For instance, when there are grounds to suspect that the transaction presents a fraud risk. So, Santander ought to have been on the look-out for the possibility of fraud and made additional checks before processing payments in some circumstances.

However, having considered when the transaction in question was made, its value, and who it was made to, I'm not persuaded that Santander ought to have found the payment suspicious such that it ought to have made enquiries of Mr H before processing it.

Once the payment was authorised by Mr H and processed by Santander, the bank wouldn't have been able to stop the funds from leaving his credit card account. I've considered

whether Santander did enough to attempt recovery after it was notified of the dispute. I can see the bank requested additional documentation to enable it to dispute the transaction with the merchant. But Mr H was unable to provide this.

There are only a limited number of reasons available to a card provider to attempt a chargeback. Also, the scheme is voluntary – the card provider doesn't have to attempt a chargeback. In the individual circumstances of what happened here, I consider Santander acted fairly in not disputing the transaction through the chargeback scheme.

Following the complaint being referred to our service, Santander has also considered whether Mr H has a valid claim under Section 75 of the Consumer Credit Act 1974. I understand that the bank has since written to him and declined the claim. Santander has told our service that it hasn't received a complaint from Mr H about its decision to decline the Section 75 claim. As such, it wouldn't be appropriate for me to make a finding on the bank's actions in relation to the Section 75 claim. Mr H will need to complain to Santander directly in the first instance if he's unhappy with the outcome of his claim.

Overall, while I appreciate Mr H's frustrations, for the reasons I've set out in this decision, I can't fairly hold Santander responsible for the money Mr H seeks to recover.

My final decision

For the reasons given, 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 H to accept or reject my decision before 26 March 2025.

Gagandeep Singh
Ombudsman