

The complaint

Mr K is unhappy that Santander UK Plc (Santander) won't refund the money he lost to a scam.

What happened

Mr K was searching for return flight tickets so that he could visit his elderly father overseas. He searched a well-known online flight comparison site (that I'll call S) to understand the price of the tickets he was looking for. Once he found the price was circa £670, he then searched another company (that I'll call F) to secure the tickets. Mr K says he has purchased tickets in this same way for many years; he'd always check the flight price first on S, and then would contact F to make his purchase.

Mr K clicked the first link to F's website that appeared on the results of a well-known online search engine. He called the phone number on the website. Unbeknown to Mr K, he was not speaking to the real F - but rather a fraudster. He spoke to an agent who confirmed the price for the tickets would be £540. Mr K thought he was receiving a discount as a regular customer. He was asked to give the card details for another bank (Bank T) first of all, but this failed, so instead he gave his Santander debit card details. The agent said that the card payment had not gone through, so he needed to attempt it again. However, the agent then said there was a problem generating a ticket for Mr K, so he would issue a refund to his Bank T card. Instead, it seems the fraudster debited further funds from Mr K's Bank T card. At this point, Mr K realised he'd been scammed. In total, two debit card payments debited Mr K's Santander account totalling £1,359.30.

Santander declined to reimburse Mr K as it said that the Contingent Reimbursement Model (CRM) Code – a voluntary code Santander signed up to, which sets out when a bank must reimburse a scam victim – does not cover card payments. It also said a chargeback would not be valid for the payments.

Mr K complained that when he phoned Santander in late June, he was incorrectly told by a staff member that he had asked Santander to cancel his claim. Santander confirmed this was misinformation, so it paid Mr K £100 for the service he received.

Our Investigator didn't uphold Mr K's complaint because they didn't think Santander ought reasonably to have prevented Mr K's loss. They also felt the compensation paid was a fair reflection of the service he'd received.

As no agreement could be reached, this case was passed to me for a decision to be issued.

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.

Having done so, I agree with the outcome our Investigator reached and broadly for the same reasons. I'll explain why.

Under the relevant regulations, namely the Payment Services Regulations 2017 (PSR 2017), Mr K is responsible for transactions he has authorised. It's not in dispute that Mr K gave the fraudster his card details, understanding that in doing so, payments would be leaving his account. So, I'm satisfied that Mr K consented to the payments taking place (albeit he was tricked into doing so) and the starting point is that he is liable.

Santander is correct in its assessment that the CRM Code does not cover card payments and so it can't fairly be used to assess Mr K's claim. However, I've still considered, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to be good industry practice at the time, whether Santander ought fairly and reasonably to have recognised that Mr K was at risk of financial harm from fraud when making these payments.

It wasn't unusual for Mr K to use his account to make debit card payments, as his account statements show regular card payments made in the 12 months prior to the scam. I can also see several debits of similar value to the card payments made, including via direct debit, faster payment and card payment. So the values were not hugely out of character for Mr K's typical account usage. I accept that two payments were made, for a similar value, in relatively quick succession. However, I am mindful that these both went to seemingly legitimate merchants – both associated with travel, whom you might reasonably expect to see a larger value payment being made to. And as Santander has provided evidence that the transactions were authorised with an additional layer of security, by means of a one-time passcode, I'm satisfied they had no reason to suspect it wasn't Mr K making the payments.

All in all, I'm not persuaded Santander ought to have recognised Mr K was at risk from harm due to fraud or a scam here. So it wasn't at fault for processing the payments in line with his instructions.

Recovery of funds

I've next considered whether Santander ought to have done more to recover Mr K's funds once he reported the scam.

It's important to note that whilst a payment might appear in a 'pending' state, once it has been authorised, Santander is not able to cancel the payment, even if a dispute later arises. But in some limited circumstances, Santander might be able to raise a chargeback claim for the card payments.

A chargeback is a voluntary scheme run by card scheme providers – in this case, Visa. It arbitrates on disputes between a customer and a merchant where they haven't been able to resolve matters themselves. The arbitration process is subject to the rules of the scheme – which are set by Visa – and there are only limited grounds on which a chargeback can be raised. Chargebacks raised outside of these grounds are deemed invalid. A chargeback isn't a consumer right – and it might be reasonable for a firm to not attempt a chargeback where there is limited prospect of success.

It's evident here that the card payments Mr K made went to two legitimate merchants specialising in travel, who most likely will have provided the goods or services paid for, albeit to the fraudsters. Mr K's dispute is mainly with the fraudster. But as the card payment was made to the legitimate merchants and not the fraudster, Santander can't raise a claim against the fraudster directly, but rather, only the legitimate merchants Mr K has paid. And as Mr K authorised these payments himself, I'm afraid there are no grounds to suggest that a chargeback dispute would have been successful, and I don't think Santander made a mistake by declining to pursue a chargeback claim here.

Customer service

It's not in dispute Santander gave Mr K misinformation when he phoned them to discuss his claim. It has apologised for this and paid £100 to recognise the service Mr K received. I appreciate Mr K feels let down here, however I do think the compensation paid already is a fair reflection of Santander's errors, so I won't be asking it to increase this.

Ultimately, the main cause of Mr K's loss and distress here, is a fraudster. I'm very sorry Mr K lost this money and it's not in dispute he is the victim of a cruel scam. However, my role is to consider whether Santander has acted fairly and reasonably, and in accordance with the relevant rules and regulations. And, having done so, I'm not persuaded Santander is liable for his loss. Nor would any misinformation provided during the handling of Mr K's claim, mean that Santander would be obliged to refund him.

My final decision

My final decision is that I do not uphold this complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 December 2024.

Meghan Gilligan
Ombudsman