

The complaint

Mr A complains that Santander UK Plc (Santander) wouldn't refund the money he lost in a scam.

What happened

What Mr A says:

In March 2022, Mr A contacted a travel company using an online search. He filled out a contact form with his contact details to arrange a call with an expert. He then spoke to them and was persuaded into booking a holiday. He was asked to make payments in instalments, which he thought was normal. He made six payments to the travel agent totalling £2,237.43, using his debit card. The payments were:

Date	Type	Payee	Amount
19 March 2022 – 16.53	Debit card – cardholder not present	Money transfer service, Amsterdam	£596.00
19 March 2022 – 17.03	Debit card – cardholder not present	Money transfer service, Amsterdam	£598.98
19 March 2022 – 17.06	Debit card – cardholder not present	Money transfer service, Amsterdam	£598.98
21 March 2022 – 10.52	Debit card – cardholder not present	Money transfer service, Amsterdam	£149.00
21 March 2022 – 10.59	Debit card – cardholder not present	Money transfer service, Amsterdam	£146.73
21 March 2022 – 11.03	Debit card – cardholder not present	Money transfer service, Amsterdam	£147.74
29 March 2022	Debit card – cardholder not present	Money transfer service, Amsterdam	£147.74 (refund)
29 March 2022	Debit card – cardholder not present	Money transfer service, Amsterdam	£1.26 (refund)
Total claim			£2,088.43

Mr A says he trusted the company and believed they were a legitimate business. But when he didn't receive any confirmation of the holiday, nor travel documents, he realised he had been scammed and the travel company was fake.

The travel company's invoice was dated 17 March 2022 for £1,089.19. It didn't have any payment terms on it, and the two amounts due differed between £1,089.99 and £1,089.19.

Two sums totalling £149.00 were credited to Mr A's account on 29 March 2022 – so his loss totalled £2,088.43.

Mr A reported the matter to the police on 22 March 2022. He contacted Santander on 26 March 2022.

Mr A says that he hadn't made such payments to the payee before, and six payments were made in rapid succession. The payments were therefore unusual. So - Santander should've prevented them from being made, or at least questioned them. If they had, he says the scam would've been uncovered and he wouldn't have made the payments. He said Santander should refund the money under the provisions of the Contingent Reimbursement Model Code (CRM Code).

Mr A says the episode left him feeling stressed, anxious, and embarrassed. He says he can no longer trust anything he sees online.

What Santander said:

Santander said their automated fraud prevention system didn't pick up the payments as being unusual or suspicious. Mr A had authorised the payments and customers have a responsibility to check they are making payment to a legitimate company before providing their card details. Santander said Mr A had no chargeback rights as he had made payment to a money transfer service. Santander didn't refund the money.

Our investigation so far:

Mr A brought his complaint to us. Our investigator didn't uphold it. He said that given the value of the payments - Santander didn't need to intervene to question or stop them. Each time, the payment was for less than 3% of Mr A's balance – so there weren't any signs of his account being emptied. Mr A had also made payments or transfers that were larger than the payments in question – so the payments weren't unusual. He said the chargeback rules did not apply – as the payments were to a money transfer service.

Mr A asked that an ombudsman look at his complaint - and so it has come to me to make a 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.

I'm sorry to hear that Mr A has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case – as the payments were made by debit card on a phone call with the 'travel company'. The payments were authorised by Mr A under 'cardholder not present' processes. And re-confirmed by Mr A in the app. So although Mr A didn't intend for the money to go to a scammer, he 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.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) 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 card to an overseas account.

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

I wanted to establish how much Mr A's losses were - as the invoice from the travel company was for £1089.99. I asked Mr A about this and he said he made three payments totalling £2,237.43. He couldn't explain why he paid more than the invoice amount – other than the scammer took more payments than needed, and he also confirmed he authorised each one in the app. In actual fact, as there were two refunds totalling £149.00, Mr A's loss was £2,088.43.

I looked at the activity on Mr A's account – to see if the payments could be considered unusual. There were many bill payments or debit card payments from his account of a similar amount to the amounts paid in the scam. For example:

1 October 2021: £388.99 debit card payment
 16 October 2021: £983 – debit card payment
 15 October 2021: £850 – debit card payment
 12 November 2021: £325 – bill payment
 1 December 2021: £500 – bill payment
 15 December 2021: £850 – bill payment
 22 December 2021: £410 – bill payment
 15 February 2022 - £450 – bill payment
 2 March 2022: £368 – bill payment
 8 March 2022: £300 - bill payment
 11 March 2022: £400 - bill payment

So – the payments to the scammer weren't out of line with how Mr A typically used his account.

Mr A has argued that the payments were unusual – as they were to a new, international payee. While I acknowledge that was the case - there's also a balance to be struck: Santander has obligations 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 in Mr A's case, the payments were of such a low value - that we wouldn't have expected Santander to have intervened.

I also noted that the payments were low in comparison with Mr A's balance (less than 3%). A typical scam characteristic is to empty, or almost empty an account – and that wasn't the case here. So, in this case, I think Santander acted reasonably in processing the payments.

Recovery:

Where a scam has taken place, we expect firms to take reasonable steps to try to recover the money. But here, as the payments were made by debit card, authorised by Mr A, and were made to a money transfer service, this isn't a process that was likely to be successful.

Santander did try to get the money refunded by using the chargeback process. This is a voluntary scheme and refunds can only be made under certain criteria set by Visa and Mastercard. And in this case, because the payments were made to a money transfer service, the chargeback claim wasn't successful.

I did see that £149.00 was returned to Mr A's account on 29 March 2022. I asked Santander about this and they told us that it wasn't the result of any recovery action by themselves.

I was sorry to learn that Mr A lost money in a cruel scam, but having reviewed what happened, I am not upholding his complaint.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 September 2023.

Martin Lord
Ombudsman