

The complaint

Mr J complains about Santander UK Plc.

He says that Santander didn't do enough to protect him when he became the victim of a flight scam and would like it to repay him the money he has lost as a result.

What happened

In September 2022, Mr J and his wife, Mrs J, were trying to urgently locate flights to visit Mr J's brother in America, who was sadly terminally ill.

They looked online and found a number supposedly for 'Dial a Flight'. They called the number as advertised on the website they found and spoke with an 'agent' who supposedly worked for Dial a Flight.

They were told that they could purchase two business class tickets, flying from Heathrow the next day with British Airways for around £6,000.

They were also told by the agent that the payment would need to be split between different companies.

Mr J's Santander Credit card was used to pay £2,800.28 across four payments for the supposed flights, with the remainder being paid on Mrs J's credit card with a different provider. They were sent an email confirming the flights supposedly from British Airways – but not the tickets which they were told would follow in a few hours.

However, the 'agent' was actually a scammer, and used Mr J's credit card to purchase four separate flights for other individuals, which were all used.

Mr J realised something was wrong when he didn't receive his tickets the next day and called back the scammer who made up excuses as to why they hadn't been received. He realised he had been the victim of a scam.

Mr J made a complaint to Santander, while his wife did the same with her credit card provider.

Santander attempted a 'chargeback' on Mr J's behalf – but only one of these was successful at £497.25. It didn't uphold his complaint and said it couldn't help any further.

Unhappy, Mr J brought his complaint to this Service. Our Investigator looked into things but didn't think that the complaint should be upheld.

Mr J remained unhappy, so the complaint has been passed 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.

Having done so, I've decided not to uphold this complaint, for broadly the same reasons as our Investigator. I know that this will be very disappointing for Mr J, and I can understand that the whole episode has been deeply distressing, and this has been further compounded by the sad circumstances surrounding the need for urgent flights.

It isn't in dispute that Mr J has been the victim of a scam and has lost money as a result – but I need to decide if the loss he suffered could have been prevented by Santander – and I'm afraid that I don't think that Santander could have prevented what happened here. I'll explain why.

In line with the Payment Services Regulations 2017 (PSRs), Mr J isn't liable for payments he didn't authorise, unless he failed with gross negligence or intent to comply with the terms of the account or keep his personalised security details safe. But I am satisfied that Mr J did authorise the payments – he provided his card details over the phone to the scammer and also provided the one-time passcodes Santander sent him to the scammer too.

While I understand that Mr J didn't intend for the payments to be used as part of a flight scam and was tricked by the scammer, this doesn't change the fact that he authorised the payment in the first instance, and businesses are generally expected to act on their customers instructions.

That said, there are some circumstances where a business should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Santander should fairly and reasonably:

- Been monitoring accounts – including payments made and 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 its customers were at risk of fraud (amongst 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; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.

Santander didn't contact Mr J about any of the payments that he made – but I don't think that it needed to. The payments were made to genuine airlines, and the amounts that were paid were not unusual for the type of transaction that was being made. And even if Santander *had* contacted Mr J – I still don't think that the scam would have been uncovered. Mr J had located the number for what he thought was Dial a Flight himself, and knew he was making payments for flights, and the number of payments. So had Santander questioned him about it, I don't think that it would have had any concerns about what Mr J was doing. So, I don't think it missed an opportunity to prevent the loss.

I know that Santander attempted a chargeback from the airlines on behalf of Mr J – but only one of these was successful. I don't know why this particular airline decided to agree to the refund, but as the flights had been used (albeit not by Mr J and his wife) the other three airlines had provided the services that had been requested of them. So, I don't think it's likely that the other chargebacks would have ever been successful.

Unfortunately, Mr J also doesn't enjoy protection under the Section 75 Consumer credit Act 1974 either – as the service that was purchased (the flights) were provided and used. While I know that it wasn't Mr J that used them, he did authorise the purchase, even if he was tricked into doing so. So, I'm afraid that the option to make a claim in this way is not available to Mr J.

I also understand that Mr J is upset that his wife has been refunded by her credit card provider as a gesture of goodwill for the payments that she made on her own credit card. However, this was the choice of her credit card provider. I'm not able to direct or compel Santander to make such an offer when I don't think that it has done anything wrong.

I am very sorry for the situation Mr J now finds himself in. He has been the victim of a cruel scam and has lost a lot of money as a result. But this loss was caused by the scammers themselves – and not Santander.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 13 September 2023.

Claire Pugh
Ombudsman