

The complaint

Mrs P complains that Santander UK Plc hasn't refunded her after she told it she'd been the victim of a scam.

What happened

Mrs P engaged the services of a travel agent, whom I'll refer to as Mr S. She'd received a recommendation for Mr S' services, with friends having had good experiences in the past.

Mrs P was arranging a group booking of flights. The details were all agreed, and Mrs P made a payment of £1,490 to Mr S on 2 October 2019 for flights for her and her son. The flights were booked for July 2020.

Mrs P made a separate flight booking through Mr S in November 2019.

Mrs P couldn't take the trips because of the global pandemic. She remained in touch with Mr S about booking other trips and making alternative arrangements. As time went on, she received a refund of the money she'd sent in November. But when she tried to use the credit from the earlier booking, or tried to get it refunded by Mr S, the money wasn't forthcoming.

The contact between Mrs P and Mr S continued for many months, with the last contact from Mr S coming in August 2022. After that Mrs P heard nothing more from him and she still hadn't had her money back. So she contacted Santander to report she'd been the victim of a scam.

Santander considered what Mrs P had said but didn't refund her loss. It felt that Mrs P had a civil dispute with Mr S, rather than it being a case of her being victim to a scam. Mrs P disagreed and brought the complaint to our service.

One of our investigators looked into what had happened and ultimately agreed with Santander. And so she found it had acted fairly and reasonably in not refunding Mrs P.

Mrs P was dissatisfied with that answer and so the complaint has been passed to me for 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 disappoint Mrs P further, but I'm reaching the same outcome as our investigator and for broadly the same reasons. I'll explain why. In doing so I'll not refer to every detail of what's happened, instead covering the key points that have influenced my decision. But I have considered everything that Mrs P and Santander have said.

The starting point at law is that a customer is deemed responsible for payments made from their account that are properly authorised in line with the terms and conditions of their account and in accordance with the Payment Service Regulations 2017. There's no dispute as to whether Mrs P authorised the payment to Mr S.

There are times when a bank might be responsible for refunding authorised payments, including when money is lost to a scam. Santander is a signatory to the Lending Standards

Board's Contingent Reimbursement Model (CRM) Code which, broadly speaking, looks to see the victims of scams reimbursed. But, for the reimbursement provisions of the Code to apply, a claim must first be in scope of the Code. And it specifically talks about civil disputes being outside of that scope. And so it's necessary for me to consider whether Mrs P has fallen victim to a scam, or whether she has a civil dispute with Mr S.

I can understand why Mrs P feels she's been the victim of a scam. She has paid for a service that she hasn't received. She's unsure of what has happened to Mr S or her money and I'm sure she feels very much like she's been robbed. But I'm not persuaded Mr S set out to deceive and steal from Mrs P. Instead, I'm satisfied this is a civil matter between the two parties, where an otherwise legitimate supplier has failed to deliver what was paid for.

I've seen evidence, including bank account statements, which support that Mr S was legitimately providing a service at the time Mrs P made the payment to him. That evidence also supports that he continued to provide those services long after the payment was made. And so it appears Mr S was continuing to operate legitimately, even if he might have been failing to fulfil his contractual obligations.

The evidence also shows that Mrs P (and other people) were in contact with Mr S long after the disputed payment. Mrs P herself made further payments to him which were legitimately used to make flight bookings. And when those were cancelled Mrs P got her money back. These aren't the actions of a scammer. I can see no reason why Mr S would have continued to speak with Mrs P, even less so return money to her, if his intent had always been to scam and deceive her.

Mrs P has explained that she knows others from her group have received refunds from their banks. I can't say why those people might have received those refunds. I must assess Mrs P's complaint on its own merits and in consideration of the evidence I have before me. That others might have had money back doesn't lead me to a point where I can say Mrs P has been deliberately scammed by Mr S, and that that was his intention from the point at which she paid him.

I can't tell Mrs P exactly what's happened or what Mr S has done with her money. Nor can I say why he hasn't returned it to her. I'm not saying that Mrs P hasn't lost money here, or that Mr S has acted fairly and reasonably. But overall, the evidence persuades me this is a civil matter between Mrs P and Mr S. And because of that there's no reason I can fairly and reasonably direct Santander to refund Mrs P's loss.

My final decision

I don't uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 22 November 2023.

Ben Murray
Ombudsman