

The complaint

Ms P is unhappy that Santander UK Plc won't refund the money she lost after she fell victim to a scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. But in summary I understand it to be as follows.

Ms P was contacted by email by someone who she believed was a senior colleague in the company she worked for. The email asked Ms P to contact the colleague via a well-known social media application regarding an urgent task. Ms P was then asked to purchase gift cards for clients.

Believing she was communicating with her colleague, Ms P made four transactions using her debit card, totalling £1,000 on 27 March 2023, at a high street retailer to purchase the gift cards. She was asked to send details of the serial numbers via the chat message. But unfortunately and unknown to her at the time, the email and messages had come from a fraudster. Ms P realised she'd been scammed when she went into work and was told that it wasn't a colleague that she'd been communicating with.

While Ms P was making the transactions, they flagged on Santander's systems and it sent a message to Ms P requesting that she contact it. Ms P called Santander, who ran through security with Ms P and asked her to confirm that the transactions were genuine, which she confirmed they were – so Santander allowed the payments to progress.

Ms P complained to Santander and it issued its final response in April 2023, not upholding the complaint. In summary it didn't think it was responsible for Ms P's loss.

Unhappy with Santander's response, Ms P then brought her complaint to this service. One of our Investigator's looked into things but didn't uphold the complaint. In summary this was because he didn't think Santander could have been expected to have done more than it did. Our Investigator also considered there was no basis upon which Santander could have raised a Chargeback claim.

Ms P didn't accept our Investigator's view and so the complaint has now been passed over 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

I'm sorry to hear of what's happened to Ms P, and I can understand entirely why she feels so strongly that her money should be returned to her. But having thought very carefully about Santander's actions, I think it did act fairly and reasonably in allowing the transactions to be made from Ms P's account. I'll explain why.

In broad terms, Santander can only hold Ms P liable for the payments if the evidence suggests it's more likely than not that she made or authorised them herself. Here, it is not in dispute Ms P authorised the payments, indeed she says herself she did. So even though Ms P was tricked, I can't fairly say she didn't authorise the transactions.

But firms, such as Santander, have obligations to be alert to instances of fraud. This means that, particularly with the increase of sophisticated fraud and scams in recent years, there are circumstances where a firm should fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

Here, I can see that Santander did contact Ms P and ask her to confirm whether the payments on her account were genuine, it spoke to Ms P who confirmed the transactions were genuine and that she was purchasing gift cards. I need to consider whether that intervention went far enough or whether Santander should have done more than it did.

Santander has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud. Having reviewed the activity on Ms P's account in the months leading up to the scam, I think, while it's finely balanced, that Santander's intervention was proportionate in the individual circumstances of this case and I can't fairly or reasonably have expected them to do more than they did.

I say that as when comparing the payments Ms P made to the fraudsters, against her typical account activity in the months leading up to the scam. I'm not persuaded that the activity was so unusual or out of character that I would have expected Santander to do more than it did. There are other payments in the months leading up to the scam for similar amounts or more and it is not uncommon for Ms P to make card payments. I'm also conscious that the payments Ms P made to the fraudsters didn't clear or go close to clearing the balance on her account, which can sometimes, but not always, be an indication that somebody may be at risk of financial harm.

In summary, I don't think the transactions made were so unusual or out of character, that I would have expected Santander to have intervened further than it did.

I understand Ms P mentioned to Santander that she thought there was an insurance policy in place to protect her. I think what Ms P is referring to is The Contingent Reimbursement Model (CRM code). The CRM code is a voluntary code introduced in May 2019, which Santander are signatories of. However the CRM code doesn't cover card payments – so it is not something I can consider when looking at this complaint.

Finally, I've considered whether Santander could have recovered any of Ms P's payments. As she made payments using her debit card, the only potential recovery option would have been through the chargeback scheme.

The chargeback process is voluntary and run by the card scheme – in this case Mastercard - whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed or be deemed a 'valid claim'.

Our role in such cases is not to second-guess the card scheme rules, but to determine whether the regulated card issuer (i.e. Santander) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of Ms P.

I don't see that Santander attempted chargeback claims. Here Ms P didn't pay the fraudsters directly and instead paid a legitimate retailer for gift cards, and then shared the serial numbers of those gift cards with the fraudsters. I therefore think the retailer would have likely defended the chargeback claims on the basis that Ms P received the service/goods she paid for.

But before a chargeback claim can be defended, Santander would need to have valid grounds to process any claim and it doesn't appear it would have had any because there is no dispute here that Ms P had received the gift cards in exchange for her payments. So I don't think Santander acted unfairly by choosing not to raise chargeback claims on Ms P's behalf.

I am sorry to disappoint Ms P, she was the victim of a cruel scam and she has my sympathy that she has lost money in this way. However, I can't fairly say Santander should have prevented the loss and therefore it isn't liable to reimburse Ms P.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 20 October 2023.

Stephen Wise
Ombudsman