

The complaint

Mrs J complains that Santander UK plc trading didn't do enough to protect her from the financial harm caused by a scam, or to help her recover the money once she'd reported the scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Between March 2019 and February 2020, Mrs J made 106 payments totalling £12,413.08 to a company I'll refer to as "K". She had decided to invest in gold on the basis it always increased in value and on the understanding the gold was stored in vaults and could be delivered on request.

In February 2021, Mrs J contacted K to request delivery of the gold, but she didn't receive a response. She contacted them again in March and April, but didn't receive a response until December 2021, when she received an email encouraging her to convert her assets to cryptocurrency, at which point she became concerned K was operating a scam.

Mrs J contacted Santander to tell it she'd paid for goods that were never received, but it didn't accept K was a scam. However, it offered to refund £6391.34 under Section 75 of the Consumer Credit Act 1974, which was the sum all payments to K over £100.

Mrs J wasn't satisfied and so she complained to Santander because she thought it should refund all the money she'd lost. But Santander maintained its position, explaining that for Section 75 to apply, the item value to which the supplier has attached a cash price should be more than £100 and less than or equal to £30,000. It also said Mrs J been in contact with K, so it wasn't classed as a scam or fraud. And it was out of time to raise a claim under Mastercard's chargeback rules.

Mrs J complained to this service arguing that even though some of the payments were under £100, it wasn't possible to deliver one gram of gold, so the item she was purchasing cost more than £100.

Our investigator didn't think the complaint should be upheld. She accepted Mrs J had lost money, but she didn't think Santander should reasonably have been expected to prevent her loss as the payments weren't unusual in comparison with her typical expenditure, and there were no warnings about K. So, she didn't think it missed an opportunity to intervene. She also said Mrs J was out of time to raise a chargeback request and the chargeback rules don't apply to scams. And she was satisfied Santander's decision not to refund the payments which were under £100 was fair.

Mrs J wasn't satisfied and so she's asked for her complaint to be reviewed by an Ombudsman. She maintains K was operating a purchase scam because it took her money with intent to make a financial gain, and there were warnings about K from October 2019, but Santander processed the payments.

She's argued the lower limit of £100 refers to the value of the goods purchased, explaining the agreement was to buy 2.5g or 5g bars, payable in instalments and she had intended to buy 5g bars as each transaction bought less than 1g of gold.

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 reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear Mrs J has lost money. I know she feels strongly about this complaint, and this will come as a disappointment to her, so I'll explain why.

I'm satisfied Mrs J 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, under the Regulations, and under the terms and conditions of the account, she is presumed liable for the loss in the first instance.

I've carefully considered the circumstances and I accept Mrs J has lost money and that she believes she was the victim of a scam. But given the size and value of the payments, I don't think Santander ought to have intervened to stop the payments or that it could have done anything else to prevent her loss.

Section 75 of the Consumer Credit Act 1974

Santander has refunded some of the payments under Section 75 because they were made using Mrs J's credit card. But it has refused to refund any payments below £100 because they don't relate to a single item which had a cash price of more than £100.

Mrs J believes Section 75 should apply because she was paying in instalments for 5g gold bars (which were worth more than £100), but she hasn't produced any evidence to show she had an agreement with K to pay in instalments or that she intended to purchase 2g or 5g gold bars. Conversely, Santander has relied on receipts Mrs J received which show that for each payment, she was buying a specified amount of gold, for example, on 5 October 2019, she purchased 0.981 grams of gold for £65.

Because of this, I'm satisfied that Santander's decision not to refund any payments less than £100 under Section 75 was fair because they related to an amount of gold with a cash price which was less than £100.

Chargeback

I've thought about whether Santander could have done more to recover Mrs J's payments when she reported the scam to it. Chargeback is a voluntary scheme run by 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. Our role in such cases is not to second-guess Mastercard's arbitration decision or 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 its cardholder (Mrs J). In this case, Mrs J was out of time to raise a request, so I'm satisfied there was no prospect of a successful chargeback.

Overall, I'm satisfied Santander took the correct steps prior to the funds being released – as well as the steps they took after being notified of the potential fraud. I'm sorry to hear Mrs J

has lost money and the effect this has had on her. But for the reasons I've explained, I don't think Santander is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 1 November 2023.

Carolyn Bonnell
Ombudsman