

The complaint

Miss K complains about Santander UK Plc (“Santander”). She says that Santander didn’t do enough to protect her when she became the victim of a ‘Flight scam’ and would like it to repay her the money she has lost as a result.

What happened

In 2022, Miss K bought flights with a company called Love Holidays. When she received the flight confirmation, she discovered that the passenger details were incorrect.

Eventually, Miss K contacted what she thought was the airline using a number she found online. She was told that she had to book new flights and she would be refunded the original ones that she had purchased.

Miss K’s Santander Credit card was used to pay £3,426 across two payments for the supposed flights.

However, the ‘agent’ was actually a scammer, and used Miss K’s credit card to purchase separate flights for other individuals.

Miss K realised something was wrong when she noticed that the payments were to Net flights not Love Holidays and that when she contacted the airline again using different contact details, she found out that it had not received a payment from Miss K.

Miss K made a complaint to Santander who asked Miss K for details of what happened in order to raise a chargeback. Miss K says she returned the requested information, Santander said that Miss K did not provide enough information by the 120-day chargeback deadline. So, Santander declined to raise a chargeback, it also declined Miss K’s Section 75 claim.

Unhappy, Miss K brought her complaint to this Service. Our Investigator looked into things but didn’t think that the complaint should be upheld.

Miss K 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 Miss K, and I can understand that the whole episode has been deeply distressing for her.

It isn’t in dispute that Miss K has been the victim of a scam and has lost money as a result – but I need to decide if the loss she 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), Miss K isn't liable for payments she didn't authorise, unless she failed with gross negligence or intent to comply with the terms of the account or keep her personalised security details safe. But I am satisfied that Miss K did authorise the payments – she provided her card details over the phone to the scammer.

While I understand that Miss K 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 she authorised the payments 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 Miss K about any of the payments that she made – but I don't think that it needed to. The payments were made to a genuine flight provider, and the amounts that were paid were not unusual for the type of transaction that was being made. And even if Santander had contacted Miss K – I still don't think that the scam would have been uncovered. Miss K had located the number for what she thought was the airline herself, and knew she was making payments for flights. So had Santander questioned her about it, I don't think that it would have had any concerns about what Miss K was doing. So, I don't think it missed an opportunity to prevent the loss.

In relation to recovering the transactions I have considered if Santander has done enough in relation to this matter.

Chargeback

Chargeback isn't a legal right or a guaranteed way of getting a refund. But it can offer a way to informally resolve disputes between merchants and cardholders. The rules that apply are set by the card scheme, and there are limited grounds on which a chargeback can succeed. Banks must comply with those rules before attempting a chargeback on behalf of their customer. Our role in such cases is not to second-guess the card scheme rules, but to determine whether the regulated card issuer (in this case Santander) acted fairly and reasonably when presenting - or choosing not to present - a chargeback on behalf of its cardholder (in this case Miss K).

In this instance I am not persuaded, albeit on balance that Miss K provided enough evidence to support her claim before the 120-day deadline for a chargeback so I don't think that Santander did anything wrong in not pursuing the chargeback. I note Miss K's comments that she did send the evidence to Santander but there is not enough for me to say that the evidence was actually received. Moreover, even if Miss K did submit all the evidence that she has now provided I am not persuaded that a chargeback would have been successful.

I say this because Miss K would've only had prospects of a chargeback succeeding in these circumstances if it could be shown that Net Flights failed to provide the goods/services paid for or that they had been misrepresented to the end recipient, which in this case is not Miss K but the scammer. But there is no evidence that the goods/services paid for were not ultimately provided/were misrepresented to the end recipient (in this case the scammer), it seems there would be little prospect of Santander being able to recover Miss K's money through a chargeback claim even had Miss K supplied all the information prior to the 120-day deadline.

Section 75

Under section 75 of the Consumer Credit Act 1974 ("CCA"), the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. Section 75 will only apply when there is a direct relationship between the debtor, creditor and the supplier (in this case, Miss K, Santander and the scammer respectively).

From what I've considered, I'm not persuaded that a valid debtor-creditor-supplier relationship exists in this case. I say this because Miss K's payment were not made directly to the scammer, but to Net Flights. Consequently, this breaks the debtor-creditor-supplier chain. Net Flights hasn't breached its contract with Miss K or misrepresented the service it provides.

I am very sorry for the situation Miss K now finds herself in. She 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 Miss R to accept or reject my decision before 10 November 2023.

Charlie Newton
Ombudsman