

The complaint

Miss B is unhappy because Santander UK Plc (Santander) did not reimburse the money she transferred to a fraudster.

What happened

Miss B had some investment experience and had used a certain trading platform. She saw a social media advert posted by someone I'll call Mr A who said he could make good profits with stocks and shares. Mr A had good reviews. Miss B got in touch with Mr A and agreed to invest £100 from an account held with another bank on 30 September 2020. Miss B says she checked that £100 was all she'd have to pay, and Mr A agreed. Miss B didn't complete any checks before transferring £100 to the account details provided by Mr A. The account was in the name of an individual who wasn't Mr A.

Mr A then asked Miss B to transfer further funds. She says she asked why as she thought she was making a one-off payment and Mr A said she needed to create a transaction history for when she received profits of £5,000 to £6,000, it was all part of the process and the funds would be returned by the end of the day. After a few days, and after transferring around £3,000 from both accounts Miss B says she was worried and told Mr A she just wanted her money back and wasn't concerned about the profit. Mr A told her she'd lose all her funds if she didn't make further payments. He also asked her for her card and PIN and made cash withdrawals. Miss B said she saw from her online banking that profits were gradually being added to her account.

I have set out below relevant transactions from Miss B's account and included payments in ordinary font, **credits in bold** and *transfers to Miss B's other account with another bank in italics*.

Date	Amount	Payment type	Recipient/Sender
01/10/20	£451.05	Transfer out	Person 1
01/10/20	£750	Transfer out	Person 1
01/10/20	£750	Transfer out	Person 2
01/10/20	£250	Transfer out	Person 2
02/10/20	£1,250	Transfer out	Person 2
04/10/20	£250	Transfer out	Person 3
04/10/20	£500	Transfer out	Person 3
04/10/20	£250	Transfer out	Person 3
05/10/20	£500	Transfer out	Person 3
06/10/20	£575.52	Transfer out	Person 3
08/10/20	£50	Transfer in	Person 4
08/10/20	£58.82	Transfer in	Person 4
08/10/20	£100	Transfer in	Person 4
08/10/20	£50	Transfer in	Person 4
08/10/20	£152.13	Transfer in	Person 4
<i>08/10/20</i>	<i>£411</i>	<i>Transfer out</i>	<i>Miss B's account with another bank</i>

08/10/20	£250	Cash withdrawal	n/a
09/10/20	£471.72	Transfer in	Person 4
09/10/20	£471.72	Transfer out	Miss B's account with another bank
09/10/20	£500	Transfer in	Person 4
09/10/20	£500	Transfer out	Miss B's account with another bank
09/10/20	£950	Transfer in	Person 4
09/10/20	£950	Transfer out	Miss B's account with another bank
09/10/20	£100	Transfer in	Person 4
09/10/20	£100	Transfer out	Miss B's account with another bank
09/10/20	£50	Transfer in	Person 5
09/10/20	£212.33	Transfer in	Person 5
09/10/20	£263	Transfer out	Miss B's account with another bank
09/10/20	£300	Transfer in	Person 5
09/10/20	£300	Cash withdrawal	n/a
09/10/20	£87.96	Transfer in	Person 5
09/10/20	£87.96	Transfer out	Miss B's account with another bank
10/10/20	£50	Transfer in	Person 5
10/10/20	£50	Cash withdrawal	n/a
10/10/20	£250	Cash withdrawal	n/a
10/10/20	£70	Cash withdrawal	n/a
10/10/20	£230	Cash withdrawal	n/a
11/10/20	£50	Transfer in	Person 6
12/10/20	£195	Transfer in	Person 5
12/10/20	£40	Transfer in	Person 5
12/10/20	£500	Transfer in	Person 5
12/10/20	£430	Transfer out	Miss B's account with another bank
12/10/20	£268.80	Transfer in	Person 5
12/10/20	£1,000	Transfer out	Miss B's account with another bank
12/10/20	£300	Cash withdrawal	n/a
12/10/20	£181.35	Transfer in	Person 7

There were also payments from Miss B's other account at a different bank and same bank transfers between accounts held at the other bank which don't form part of this complaint.

Miss B has explained that as time went on, she became concerned about the payments she was making but continued because Mr A told her she'd lose all her funds if she didn't. She has also provided this service with a lot of messages she exchanged with Mr A.

Santander then blocked Miss B's account on 16 October 2020. Miss B asked Mr A what to do and he told her to leave it and use her other account with another bank. Shortly afterwards the other bank also blocked Miss B's account. Miss B says she had around £1,700 in her accounts at that bank which Mr A told her to withdraw but Miss B refused. She says Mr A stopped contacting her but when she pretended she would withdraw the funds to see if Mr A replied, he did. When Miss B went into a branch of the other bank and discussed what had happened, she realised she was the victim of a scam.

Santander discussed the payments into the account with Miss B. She said a cousin had borrowed money and was paying it back when they could. She later explained that Mr A told her that if asked she should use cover stories involving family members. Santander decided to close Miss B's account. It also applied a Cifas marker that it agreed to remove when Miss B explained what had actually happened and that she was the victim of a scam.

What Santander says

Santander reviewed its decision to close Miss B's account and confirmed it had acted reasonably and in accordance with its terms and conditions. It didn't investigate a scam complaint until this service started its investigation.

Our investigation so far

The investigator who looked at Miss B's complaint noted that the Lending Standards Board Contingent Reimbursement Model CRM Code (CRM Code) applies to the payments Miss B made to third parties. But she felt Santander acted reasonably in not refunding the third-party payments because Miss B didn't have a reasonable basis for believing she was making a legitimate investment or paying a legitimate investor. In summary, this was because the rate of return was unrealistic; the transfers, payments and receipts were suspicious; Miss B initially agreed to invest £100 and ended up paying significantly more; being asked to make transfers at night was unusual for a genuine investor; a genuine investor wouldn't ask Miss B to hand over her cards and PINs; Miss B knew she didn't need to pay money to release funds (something Mr A told her); Mr A was unable to provide proof of where funds came from when asked and when Miss B's account was blocked Mr A told her not to sort it out but use another account with a different bank.

The investigator considered whether it would have made a difference if Miss B was provided with a relevant investment warning and concluded it wouldn't. This was because Miss B had concerns herself but still made payments and because she followed Mr A's instructions.

The investigator went on to consider whether Santander could have prevented the payments from being made. She determined that from the second payment to a new payee on 4 October 2020 the payments should have flagged and a discussion with Miss B would have caused Santander concern and led to it preventing further payments. But from this stage Miss B received more funds than she lost so hasn't suffered a loss.

Finally, the investigator said Santander acted reasonably in attempting to recover Miss B's funds and in initially applying a Cifas marker before removing it once Miss B explained the scam. As the investigator felt Santander should also have removed a Hunter marker at the same time (and which Miss B was unaware of until her complaint was investigated by this service) the investigator awarded Miss B £150 compensation.

Miss B didn't agree with the investigator. In summary she said:

- She thought she was investing in a genuine investment through a genuine trader – and would not have got involved if she didn't. She only had doubts later on in the scam.
- She has traded before and knows it's possible to make a good return in minutes.
- When she became suspicious, she asked for her money back and only continued to make payments because she was under pressure and didn't want to lose the money she'd already paid.
- A warning would have made a difference. Miss B points out that when Santander told her funds she had received were fraudulent she stopped making payments.

Santander accepted the investigator's opinion and agreed to compensate Miss B.

Santander is a signatory of the CRM Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Santander says that it provided warnings to Miss B and that she didn't have a reasonable basis for believing she was making payments for a genuine investment.

I am also mindful that when Miss B made these payments, Santander should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or make 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.

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.

When thinking about what is fair and reasonable in this case, I've considered whether Santander should have reimbursed Miss B under the provisions of the CRM Code and whether it ought to have done more to protect Miss B from the possibility of financial harm from fraud.

There's no dispute here that Miss B was tricked into making the payments. But this isn't enough for Miss B to receive a refund of the money she lost under the CRM Code. The Code places a level of care on Miss B too.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning
- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate
- The customer has been grossly negligent.

**The two further exceptions outlined in the CRM Code do not apply to this case.*

The CRM Code says that where firms identify APP scam risks in a payment journey, they should provide effective warnings to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

Santander didn't identify a scam risk when Miss B made the payments I have set out and I consider it acted reasonably in not doing so. I also question whether it would have made a difference in the individual circumstances of this case if Santander had given an effective warning each time a payment was made.

Miss B was asked to make multiple low value payments to a number of different payees over a period of twelve days. I don't think these payments were particularly remarkable so that they should have stood out to Santander. I'm also mindful of the fact that Miss B did exactly what Mr A told her to as she says he told her she'd lose everything if she didn't. For example, Miss B didn't take any action when Santander blocked her account because Mr A told her not to and to use her account at a different bank. So I'm not persuaded that even if

Miss B had been given effective warnings at the time she made each payment she'd have acted any differently.

I also don't believe the fact Miss B stopped making payments once she'd been told she was receiving fraudulent funds shows an effective warning would have stopped her from making further payments. Miss B did as Mr A told her until the point when her account was blocked and she could no longer make payments so I'm not persuaded she'd have heeded any warnings given, even if I felt Santander should have provided them.

Taking into account all of the circumstances of this case, including the characteristics of Miss B and the complexity of the scam, I think the concerns Santander has raised are enough to support its position that she failed to meet her requisite level of care under the CRM Code for the payment she made. I don't think she had a reasonable basis for believing the payment was for a genuine service or that Mr A was a legitimate investor. I'll explain why.

- Miss B didn't complete any checks before she first agreed to invest. She told the investigator who considered the complaint that she'd invested before (Forex trading) so I'd expect Miss B to have some understanding of the types of things to look out for. Whilst I can understand Miss B may have decided to take a risk when she made the initial investment of £100, I consider it reasonable to take some steps before investing more.
- Miss B said that initially Mr A said he was from a company and he referred to colleagues and being in meetings, so she thought this was the case. All the messages she received about the investment were from an individual (Mr A) and all the payments she made were to the accounts of various individuals. Miss B says she questioned why and was told she was paying the person who made the investment for her. Genuine investments are made through investment companies and payments are made to company bank accounts so I think Miss B should have been concerned about paying individuals and about the explanation she was given.
- Miss B says she thought she was investing in stocks and shares but received no documentation about the proposed investment. I consider this to be unusual and another sign that the investment wasn't genuine.
- Miss B has said that an investment of £100 would lead to a profit of £5,000 to £6,000. The timeframe isn't particularly clear, but Miss B has referred to getting funds back within a day, so I believe profits were expected in days and weeks rather than years. This is an exceptionally high rate of return which I don't consider to be realistic – and I think Miss B should reasonably have had concerns and asked Mr A more about the investment. Miss B says she'd invested before and received good returns but the profits she received were nowhere near as high as Mr A was offering.
- Miss B initially agreed to a one-off investment of £100 (from a bank account with a different bank). By the end of the next day she had transferred £2,201.05. I can't see that she has provided a plausible reason for continuing to make these payments. She has explained she needed to make further payments to create a transaction history but hasn't clarified why this was necessary. I accept that later on Miss B was concerned that she'd lose everything she'd already transferred but don't believe this was the case initially and don't consider she received a plausible reason for the need to create a transaction history.
- I've seen a large number of messages Miss B exchanged with Mr A. Miss B was asked to stay "active", often late at night at times genuine companies wouldn't be operating ("*Be active 12am please*"). Miss B also made transfers on a Sunday. I don't believe legitimate companies/traders communicate at such times. I also consider the tone of the messages to be very informal and out of line with what I'd expect from

someone legitimately investing for a customer. For example, Mr A refers to Miss B as “sister” on a number of occasions (and Miss B calls him “cuz”).

- Many of the messages involve Mr A asking Miss B to transfer funds and her agreeing to do so without questioning why. There is no indication in the messages that Miss B was under any form of pressure to make the payments.
- Miss B says she gave her card and PIN to Mr A and the messages exchanged indicate Miss B gave a third party her card and asked Mr A when she would get it back. Whilst Miss B says she argued with Mr A about this, she hasn't given a plausible reason for giving Mr A her card and PIN, other than that it was the final stage in the process before she got her profits. I'm not persuaded that a genuine investment manager would ever ask for these to be provided and believe this should have been a major cause for concern for Miss B.
- Miss B hasn't provided a plausible explanation for why she received funds from multiple parties or moved these funds on to another account straight away. All she has said is that Mr A told her that others were doing the same. I don't consider a genuine investment would involve receiving funds from unknown third parties and immediately passing them on to other unknown third parties.
- When Miss B made all the transfers, she said they were to friends and family. She's also told this service that Mr A told her to use family, and particularly cousins, if asked. I don't consider a legitimate investment manager would ask someone to use an incorrect payment reason and believe this is aspect that should have concerned Miss B.
- Miss B says she became concerned about later transactions and even argued with Mr A. She continued to make payments though because she was told she'd lose everything if she didn't. I don't believe a legitimate investment manager would conduct business in this manner.

Given everything I've said I consider Miss B should fairly and reasonably have completed some checks before making the payments to Mr A and that overall, she hasn't met the required level of care to be reimbursed under the CRM Code.

Should Santander have done more to try to prevent the scam and protect Miss B?

I'm also mindful that when Miss B made these payments, Santander should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud. So I've also considered whether the payments Miss B made were unusual or suspicious.

The payments Miss B asked Santander to make in the first days of the scam seem to have been in line with what Santander might reasonably have considered the normal operation of her account. I don't consider these were payments that should have particularly stood out to Santander as being unusual or indicative of possible fraud. They were low in value, to a number of payees and made over a few days. In such circumstances, I find Santander was obliged to make the payments in accordance with Miss B's instructions and I do not find it at fault for having done so.

As Miss B continued to make payments it's possible Santander should have asked her some questions about them. It's hard to say what Miss B would have said if Santander had asked questions, as she was told to say she was paying family members and stuck to this cover story when Santander spoke to her about her use of the account.

But even if some later payments had been prevented, I can't reasonably make an award to Miss B. This is because I consider that any award made to Miss B should be reduced by 50% to reflect the fact Miss B contributed to her own loss, and the amount she received from third parties during the scam exceeds half of her loss.

I'll explain why I consider any award to Miss B should be reduced by 50 per cent. I have set out above why I don't consider Miss B had a reasonable basis for believing Mr A was a legitimate investment manager or she was making a legitimate investment. For many of the same reasons, I consider Miss B has not taken the care I'd expect a reasonable person to take. For example, she didn't complete any checks in respect of Mr A or the company he said he represented, she made payments to multiple payees with no reasonable explanation as to why she did so and also received multiple payments, she made numerous transfers to another account at another bank without a plausible reason for doing so, and followed instructions to transfer funds well outside of normal business hours. So, the most I consider Santander could be responsible for is half Miss B's losses.

Miss B received over £4,000 from third parties as part of the scam and half of her losses (from a point when Santander might reasonably have intervened) are well below this figure, so she hasn't suffered a loss. So, even if I consider Santander should have asked Miss B some questions as payments continued, and Miss B had told the truth about why she was making them, or Santander decided it wouldn't make further transfers, Miss B hasn't suffered a loss.

Recovery action

The first scam transaction was on 1 October 2020, but Miss B didn't report that she was a victim of a scam to Santander. It was only when Santander decided to withdraw banking facilities that Miss B said she was the victim of a scam. In its final response letter in November 2020 Santander asked Miss B to report the relevant transactions to it by calling a given number, but it was only when this service started to investigate in February 2021 that Miss B identified the transactions. That long after the transactions were made, I consider it very unlikely that any of Miss B's funds remained in the recipients' accounts. This is particularly so given that Miss B was told to move funds that were credited to her Santander account immediately, so it is likely that other parties were asked to do the same thing.

CIFAS and Hunter markers

Miss B says she's been unable to open a bank account after Santander closed her account. I consider Santander acted reasonably in applying a Cifas marker as Miss B received and passed on fraudulent funds in to her Santander account and wasn't able to prove she was entitled to the funds. When Miss B explained the circumstances of the scam Santander agreed to remove the Cifas marker and I consider that Santander acted reasonably in doing so.

During the investigator's review it emerged that Santander also added a Hunter marker that wasn't removed at the same time as the Cifas marker. I consider that it should have been removed at the same time as the Cifas marker and that Santander's failure to do so has caused Miss B inconvenience. She has told this service that even after the Cifas marker was removed she was unable to open a bank account even though her credit file was clear. I agree with the investigator that an award of £150 is reasonable to compensate Miss B for the unnecessary inconvenience she suffered.

Overall

Overall, I think Miss B made the payments without a reasonable basis for believing that the payments were legitimate.

My final decision

For the reasons I have set out above Santander UK plc should pay £150 compensation to Miss B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 15 February 2022.

Jay Hadfield
Ombudsman