

The complaint

Mr S and Miss S complain that Santander UK Plc won't refund money they lost to an investment scam.

As Miss S had most of the dealings with Santander, for ease of reading, I'll refer to her alone in this decision.

What happened

Miss S came across the merchant Blackstone 500 ('B') on social media through a mutual friend who told her he trades and would be able to teach her how to. Miss S was contacted by an agent of B and was persuaded to invest. She paid a registration fee and downloaded an application which was the trading platform of B. She also created an account with Bitstamp (a crypto exchange company). Miss S began to invest via another one of her banking providers and her agent at B would manage her trades and regularly update her with progress.

Miss S was told that she'd made a profit which she could withdraw but the agent advised she'd first need to pay tax (which was not initially mentioned). Miss S was told to send her payments through Bitstamp and so on 14 October 2020, Miss S made a Faster Payment of £1,898.91 using her Santander current account to Bitstamp. She made another Faster Payment of £1,898.91 on 15 October 2020 to Bitstamp in accordance with the agent's instructions.

Miss S says her agent at B disappeared and also deleted all their text messages. On 20 October 2020, Miss S reported the scam to Santander. After investigation, Santander wrote to Miss S to explain it was unable to return her payments. It said that it was satisfied she sent the Faster Payments from her online banking and that tailored scam warnings would be presented based on the reason she selected. It said it contacted the recipient bank but it advised the funds had been immediately sent on after receipt.

Miss S referred her complaint to this office.

One of our Investigators reviewed Miss S' complaint and concluded first of all, that the Contingent Reimbursement Model (CRM) Code wasn't applicable in her case because she sent the payments to her own account and from that account to the scammers. She also didn't think the payments were unusual for Santander to have intervened.

Miss S asked for an Ombudsman to review the complaint and the complaint has therefore been passed to me for determination.

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 don't uphold Miss S' complaint and I'll explain why.

The payments Miss S made weren't paid directly from her own account to the scammers. All payments were made via an account set up by Miss S in her name with Bitstamp. So I'm satisfied the CRM Code doesn't apply in this case.

But I've also considered Santander's other obligations in this case. There's no dispute the payments Miss S made were 'authorised' even though she was the victim of a scam. The payments were made by her and under the Payment Services Regulations (PSRs), and the terms and conditions of her account, she's presumed liable for the loss in the first instance. That said, as a matter of good industry practice, Santander should've 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.

I've first thought about whether Santander could have identified that Miss S was paying a potential scammer but I've noted that she didn't pay the scammers directly and instead paid a legitimate cryptocurrency exchange. So, I don't think the payee on the face of it, should have caused Santander any particular concern.

I've therefore thought about whether Santander should have suspected Miss S could be falling victim to a potential fraud or scam, based on any significant change in the normal pattern of her spending.

I don't think the payments here were sufficiently unusual, uncharacteristic or suspicious to reasonably say Santander shouldn't have allowed the payments through without first getting in touch with Miss S to check everything was in order.

When Miss S reported the scam to Santander, it tried to recover her payments from Bitstamp but Bitstamp explained no funds remained as they were quickly moved on once received.

I appreciate how disappointing this will be for Miss S and she will understandably feel aggrieved about her loss. But for the reasons set out above, I don't consider it fair to hold Santander liable for this.

My final decision

My final decision is, despite my natural sympathies for Miss S' loss, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Miss S to accept or reject my decision before 18 November 2022.

Dolores Njemanze
Ombudsman