

The complaint

Miss Z complains that Santander UK Plc (“Santander”) has failed to refund money that she lost as part of an investment scam.

What happened

Miss Z was following an investment influencer online. After being contacted by someone who was pretending to be this investment influencer, who we will call C, Miss Z says she was persuaded to carry out the following transfers to a cryptocurrency (“crypto”) exchange.

Transaction Number	Date	Merchant	Amount	Running Total
1	14/04/2021	TO BINANCE	£500.00	£500
2	14/04/2021	TO BINANCE	£1000.00	£1,500
3	19/04/2021	TO BINANCE	£1,500.00	£3,000
4	19/04/2021	TO BINANCE	£1,500.00	£4,500
5	21/04/2021	TO BINANCE	£5,000.00	£9,500
6	23/04/2021	TO BINANCE	£5,500.00	£15,000
7	23/04/2021	TO BINANCE	£5,000.00	£20,000
8	05/05/2021	TO BINANCE	£10,000.00	£30,000
9	12/05/2021	TO BINANCE	£10,000.00	£40,000
10	15/05/2021	TO BINANCE	£10,000.00	£50,000
11	19/05/2021	TO BINANCE	£10,000.00	£60,000
12	21/05/2021	TO BINANCE	£10,000.00	£70,000
13	23/05/2021	TO BINANCE	£25,000.00	£95,000
14	24/05/2021	TO BINANCE	£25,000.00	£120,000

Santander contacted Miss Z as it had blocked the second transaction. Miss Z confirmed that this transaction was genuine; was for her own account; and was because she wanted to invest in Bitcoin.

Miss Z has explained that after this point, when the value of the crypto she had purchased went down, C persuaded her to exchange all of her crypto into Bitcoin and transfer it to another crypto exchange that I will call D. She says she was told that “bots” would then trade on her behalf. Miss Z says that she believed that the transfer to D was to an account in her name. The majority of these transfers appear to have been on 23 May 2021.

The following day, on 24 May 2021, Santander blocked transaction 14. Miss Z contacted Santander and again confirmed that the transaction was for herself. Miss Z has since confirmed that she did not send this transaction from Binance to D.

Subsequently, when Miss Z was unable to withdraw funds from D she contacted Santander to request a refund of the transactions that she had made to Binance.

I issued a provisional decision on 1 March 2023 in which I said the following;

“I’ve provisionally considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. Having done so, I am upholding this complaint in part. Let me explain why.

Miss Z authorised the payments she made, even though she was duped into making them by C, as part of a sophisticated scam. She used her security credentials to request the transfers online to be made to Binance and, in broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer’s account. And under the Payment Service Regulations 2017, Miss Z is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time. I consider that

Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, such as money laundering and 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 that its customers were at risk of fraud (among 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.*
- 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.*

In the context of this scam, Miss Z transferred funds from her Santander account to her Binance account, which she says she was in control of. Once she had transferred money into her Binance account and converted it to crypto, remained in her Binance wallet. It wasn't until some time later that Miss Z transferred that crypto on to D, a scam trading platform. I appreciate that Miss Z's loss didn't materialise directly from her Santander account in these circumstances. But even though she was transferring funds to crypto accounts in her own name, I still consider that Santander ought to have taken a closer look at the payments she was making – given the significant risk of fraud associated with cryptocurrency investments at the time.

Therefore, I'm satisfied that Santander should've had mechanisms in place to detect and prevent this type of fraud at the time Miss Z was making her payments, and that it should have led to it intervening in order to ask further questions about the payments.

I note that Santander did intervene when Miss Z made transaction 2. I have listened to this call. In this call Miss Z was asked what the payment was; if anyone had advised her to make the payment; and asked whether she'd done her own research. Miss Z confirmed that the payment was for her, she was not dealing with a third-party and she was intending to trade in crypto herself.

Santander did not intervene again until payment 14. It is arguable that an earlier second intervention should've been made. Had the earlier intervention happened prior to transaction 13, I don't think anything would have happened differently. I say this because prior to this point Miss Z was not transferring the funds on to the scam trading platform at that point. So any probing questions would have likely just been met with similar answers that Miss Z provided when Santander asked her about transaction 2. Santander could not have discovered the part of the scam that had not occurred yet – especially as Miss Z had told Santander that she was not involving a third party. I also don't think that, prior to Miss Z being told to transfer the funds on, Santander could have warned Miss Z about all possible fraud that could have occurred after the payments had been made. As a result, I'm satisfied that Santander cannot be said to have caused Miss Z's loss by failing to prevent the payments prior to transaction 13.

That said though, I think that had Santander intervened during transaction 13 Miss Z might have acted differently. Firstly, the transaction was for a significantly larger amount, so I feel it should have been flagged. Secondly the reason I say that intervention would've made Miss Z act differently is because the intervention from Santander on transaction 14 did make Miss Z act differently. By intervening on transaction 14 this prevented Miss Z from transferring the funds on to the scam investment platform. I note that transaction 14 did go to Binance, but Miss Z has confirmed that the warnings provided stopped her from sending the funds on from Binance. Given this, had the intervention occurred the day before, I don't think that transaction 13 would have been transferred from Binance to D either.

I understand that Miss Z may argue that had Santander intervened during transaction 13 she would not have transferred the other funds from the previous transactions from Binance to D. It is unclear precisely the timeline in relation to this as to whether the majority of the funds were transferred to D from Binance before or after transaction 13 was carried out. But even had transaction 13 occurred before Miss Z transferred the funds to D, I don't think that Santander continued to be liable for the transactions it approved prior to this. Any loss caused on these transactions after they had been made to Binance is not a loss that I believe was reasonably foreseeable for Santander and the gap between these payments being approved and the transfer to D breaks the chain of causation for which Santander can be held liable.

I've also thought about whether Santander could have done more to recover the funds after Miss Z reported the fraud. As in some circumstances, the money can be recovered via the bank raising an indemnity with the receiving bank. However, in these circumstances,

Miss Z transferred money to Binance in order to purchase crypto, hold them in a wallet and subsequently move those funds onto another wallet. As a result, I don't think it's likely that Santander would've been able to recoup the money, particularly as the crypto was moved onto D prior to Miss Z reporting the scam to Santander. Any funds that would've remained in Miss D's Binance account, would have been hers to control. So I don't think there was anything further Santander could have done to recover the funds.

Santander are also under no obligation to refund the money to Miss Z under the Contingent Reimbursement Model (CRM) Code either, as the Code does not apply to payments which the payer has effectively made to themselves (which would have been the case here given the payment was made to Miss Z's crypto wallet with Binance, rather than directly to the scammer).

Finally, Miss Z seems convinced that Binance itself is a scam website and therefore Santander should not have allowed her to send any funds to it at all. I've noted that Santander decided (along with some other banks) decided to restrict payments to Binance following the FCA's consumer warning publication in June 2021. But I've also noted the warning was published after Miss Z made all of her payments, so I don't think I can say Santander ought to have stopped her payments because the recipient was Binance. And whilst Miss Z has alleged that Binance is a scam website, she doesn't appear to dispute that they received her funds, converted them upon her request and moved those funds on following a subsequent request. It would therefore seem that she received the services she intended to receive from Binance and would have likely received a similar service had she engaged with an alternative crypto exchange. I would also add that when Santander checked with Miss Z about transaction 2, Miss Z said that she had decided to trade in crypto and ultimately it is up to Miss Z what she decides to do with her money. So Santander can't reasonably be held responsible because Miss Z decided to spend a large amount of money to buy a crypto.

Putting things right

I currently intend to ask Santander UK Plc to do the following

- 1) Refund transaction 13; and*
- 2) Add interest to this amount at 8% simple per annum, less any applicable tax from the date this was paid, to the date of settlement."*

Responses to my provisional decision

Santander agreed with my provisional findings whereas Mrs Z did not, and in summary, she made the following points:

- If the phone call that occurred during transaction 2 between Santander and Mrs Z went as far as the phone call that occurred during transaction 14, Mrs Z would have been put off making any further transactions from transaction 2.
- Santander should have intervened prior to transaction 13.
- Had Santander intervened during transaction 13 none of the transfers would have been made from Binance to the D.

- Due to the prevalence of cryptocurrency scams, an enhanced level of caution and questioning should have gone on when transfers were made to Binance.

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.

Mrs Z has put forward considerable further submissions in response to my provisional decision, and I've read and considered everything sent in. But I don't intend to respond in similar detail.

My provisional decision sets out, in full, my reasons for upholding the complaint, and those reasons still remain. So, I'll focus on what I consider to be the key points Mrs Z has raised in response. If I don't mention a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. Instead, it's just that I don't feel the need to reference it in order to explain my decision. This isn't intended as a discourtesy – it's just a reflection of the informal nature of our service.

I will address the first point, second point and final point - which can be summarised as due to Mrs Z transferring funds to Binance, she should have been given a more thorough warning of what the likely crypto scams could be, in line with the call that happened during transaction 14. Also that there should have been multiple interventions prior to transaction 14.

I have carefully considered this and I agree that Santander should possibly have intervened earlier and more frequently. But I don't think that this would have changed anything.

I don't think that it would be reasonable for Santander to proactively describe every potential scam that could occur when funds are transferred to a crypto exchange. I should also add that if Mrs Z had been more forthcoming about receiving advice from a third party who had approached her on twitter, rather than saying that she was referred to Binance from a friend who is a banker, then Santander could have given some broad descriptions of the types of scams that could occur in situations like this. But even that is a stretch, given that up to around transaction 13 the scam had not really started - all that had happened up to that point was that Mrs Z purchased crypto for herself and held them in her own Binance wallet. I accept that Santander should have asked probing questions to ensure that the payments were not part of a scam, but had it done so, I am satisfied that Mrs Z would have said the same thing she said during transaction 2 - which was she was investing on her own behalf.

Mrs Z says that if Santander had intervened during transaction 13 it would have prevented *all* of the transfers from Binance to D. Firstly, I have looked at the transaction statement that Mrs Z provided showing her Binance transfers to the scammer. It looks like many of the transfers to D, value wise, were before the time of transaction 13. So before any intervention from Santander could have occurred that was connected to transaction 13. Secondly, as explained in my provisional decision, given the length of time between the first 12 transactions to Binance and the subsequent transfer to D, there is a break in the chain of causation – which means, the scam didn't occur at the same time the payments left Santander and arrived at Binance. The scam occurred sometime after the first 12 transactions were made and it wouldn't be reasonable for me to hold Santander indefinitely liable for them. Transactions 1 to 12 were in Mrs Z's control at the time they were made and it wasn't in her contemplation that she'd be sending the payments elsewhere and so, I don't think it could have been in Santander's either.

So overall, I remain of the opinion that Santander should have intervened during transaction 13 and had it done so it would've become apparent that the payment was likely to purchase crypto as part of an investment scam. So only this transaction should be refunded.

My final decision

For the reasons set out above and in my provisional decision, I uphold this complaint in part and require Santander UK Plc to do the following:

- 1) Refund transaction 13; and
- 2) Add interest to this amount at 8% simple per annum, less any applicable tax from the date this was paid, to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Z to accept or reject my decision before 12 April 2023.

Charlie Newton
Ombudsman