

The complaint

Ms I complains that Santander UK Plc (Santander) won't refund the money she lost when she fell victim to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them all again here. Instead, I'll summarise the key points, and focus on giving reasons for my decision.

Ms I found an investment opportunity in early 2020. She says the website looked professional, and it had good reviews, so she decided to proceed. Unfortunately, it was a scam.

Ms I made payments to the 'investment' from her Santander account. The payments didn't go straight to the scammers. They mostly went via her cryptocurrency wallet. As part of the scam, she was persuaded to allow the scammers remote access to help with the set-up of this wallet. But she had access to, and was using, that wallet.

Additionally, a few payments were made to another bank account Ms I held (with 'B') before being immediately transferred on to her cryptocurrency wallet. And from there the funds were paid out to the scammers, who Ms I believed were providing her with genuine investment services.

In early 2022, Ms I complained to Santander (via a professional representative) that it had failed to prevent the scam. When it didn't refund her, she referred her complaint to our service.

Our investigator didn't think the payments initially looked suspicious. But he thought that, when Ms I made a payment of £17,000 in June 2021, Santander ought to have intervened and uncovered the scam. He recommended that Santander refund half of the payments from that point onwards, as he thought Ms I also shared some liability for the scam by that point.

Santander got in touch to clarify which payments we were considering. Our investigator set these out. He also explained we had considered a separate complaint about B, but had made no award on that case. So there was no risk of 'double recovery'.

Ms I disagreed with the investigator's recommendation. She argued Santander should have intervened sooner, so it should refund her from an earlier point. And she disagreed that a deduction should be made for her liability.

I've listed the payments I'm considering within this complaint below. Please note there have been some discrepancies between the parties (Ms I and her professional representative, and Santander) about what is in dispute. I've looked at what Santander identified from Ms I's statements, and her complaint, to establish what is relevant to the scam:

Date	Amount	Payment type	Payee	Notes
18/08/2020	£2,542	Faster payment	Ms I's crypto wallet	
20/09/2020	£1,100	Faster payment	Ms I's crypto wallet	
20/09/2020	2x£250*	<i>Faster payment</i>	<i>Ms I's crypto wallet</i>	<i>*credited back</i>
09/10/2020	£1,000	Faster payment	Ms I's account with B	
09/10/2020	£100	Faster payment	Ms I's account with B	
09/10/2020	£3,000	Faster payment	Ms I's crypto wallet	
27/04/2021	£4,300	Faster payment	Ms I's crypto wallet	
28/05/2021	£5,000	Faster payment	Ms I's crypto wallet	
28/05/2021	£87*	<i>Faster payment</i>	<i>Ms I's crypto wallet</i>	<i>*credited back</i>
28/05/2021	£700	Faster payment	Ms I's account with B	
17/06/2021	£17,000	Faster payment	Ms I's crypto wallet	
30/06/2021	£10,000	Faster payment	Ms I's crypto wallet	
30/06/2021	£10,000	Faster payment	Ms I's account with B	
Total loss	£54,742			

**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 agree with the conclusions reached by the investigator. I'll explain why.

In line with the Payment Services Regulations 2017, Santander is expected to execute authorised payment instructions without undue delay. It is not in dispute that Ms I was scammed. But nor is it in dispute that she authorised the payments. So the starting position is that she is liable for them.

But there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If Santander failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.

I agree with our investigator that, prior to June 2021, Santander didn't have an obligation to intervene with these payments. I consider it reasonable that its systems didn't identify the payments as appearing indicative of fraud.

I appreciate Ms I's point that some of these payments were quite high in value. But when viewed amongst her account activity, they do not appear so unusual that I would have expected Santander to have been suspicious. The payments to the cryptocurrency wallet were spread out and occurred over a period of months. As time went on, it appeared to be an expected payee, making the payments appear less risky. Prior to June 2021, there doesn't appear to be a significant escalation.

However, the payment of £17,000 was out of line with Ms I's usual account activity and her usual payments to her wallet. I think that ought to have concerned Santander, and that it should therefore have spoken to Ms I about the circumstances of the payment to establish whether she might be at risk from fraud.

There is an indication in Santander's notes that it declined this payment initially and spoke to Ms I, but it cannot find the call and its notes do not capture what was asked or discussed. In the absence of this, I have to consider what is more likely to have happened.

If Santander had questioned Ms I appropriately, I think it likely would have uncovered the scam at this point. I have seen no suggestion that Ms I was coached on what to say if questioned about the payments. As she thought the investment was legitimate, it seems likely to me she would have explained what she was doing. And I think, with appropriate questioning, Ms I would have revealed details that ought to have concerned Santander.

For example: Ms I allowed the merchant to use remote access software to set up her cryptocurrency wallet and to make her first payment (funded from a separate account). At their instruction, she initially shared her password for the wallet with them. I would have expected Santander to have realised, and warned Ms I, that is a common feature of this type of scam.

I think Ms I would have heeded this warning, particularly as there are indications she had some concerns herself (as I'll address further below). In light of the concerns, Santander could have directed her on how to look into the company she was trading with, such as by checking the regulator's website to see whether it was properly regulated – or whether it had been identified as a potential scam.

The company Ms I initially dealt with had in fact been identified by the regulator as operating without the required authorisation, and it had put out a warning about this. And so I'm persuaded that appropriate intervention regarding the £17,000 payment would have uncovered the scam – and therefore have prevented her loss from this point.

I am conscious that, as Santander has flagged, on of the payments made after this date went via Ms I's bank account with B rather than the cryptocurrency wallet. But as our investigator has explained, we have considered a complaint about B and the ombudsman made no award on that complaint, meaning Ms I isn't getting a double refund for this payment. I have also seen that the money was very quickly transferred from the recipient account to the wallet, to fund the scam payments.

Ultimately, If Santander had intervened with the £17,000 as it should have done, I am persuaded that Ms I would not have made these further payments and so would not have incurred these losses. I therefore consider it fair to expect Santander to refund her for them.

However, I have also considered whether it's fair to hold Ms I partly liable for her loss by way of contributory negligence. And I agree with our investigator that it is appropriate to make a 50% deduction for this.

That is because there are indications Ms I had concerns about the company. She told Santander she had initially allowed remote access and shared the password for her cryptocurrency wallet – but then changed this as she didn't think that seemed right. She also told our investigator she had concerns that they kept on telling her to reinvest her funds rather than allowing her a withdrawal. And the regulator's warning appeared readily when searching for the named company online prior to these payments.

The payments I think Santander ought to have prevented occurred towards the end of the scam. By this point, Ms I had paid in a lot of money (including from other accounts) without being able to withdraw anything – and was continuing to pay large amounts. In the circumstances, I'm satisfied it's fair to expect both parties to share liability for the loss.

I have also considered if Santander could have done more to recover Ms I's loss after she reported the scam. But as the payments went via Ms I's own accounts before being transferred on to the scammers, it couldn't recover them nor does it otherwise have a duty to refund her. The loss happened after the funds were transferred on from the recipients paid.

Putting things right

For the reasons I've explained, Santander UK Plc should refund Ms I £18,500 – which is half of the money paid to the scam from her Santander account from 17 June 2021.

Santander UK Plc should pay 8% simple interest per year on this amount from the dates of payment to the date of settlement. If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms I how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given, I uphold this complaint and direct Santander UK Plc to put things right in line with my instructions above. It must pay the compensation within 28 days of the date we tell it Ms I accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 22 August 2023.

Rachel Loughlin
Ombudsman