

The complaint

Mrs T complains that Santander UK Plc (Santander) won't refund money she lost in an investment scam.

What happened

Mrs T is represented by a third-party firm of solicitors, but I will refer to her as the complainant.

What Mrs T says:

Mrs T had recently moved house to a new area and was still adapting to her new environment. She decided to look into investments to achieve more financial stability in her retirement and to provide for her family. She heard about how investing in bitcoin could provide good returns. She came across a bitcoin trading firm (which I will call 'A'). She chose this firm as it said customers could invest small amounts – and she wanted to try it out in that way.

A's website looked professional and she could see it had live trades showing. There were positive testimonials on it. She signed onto the website and was contacted by an account manager – who turned out to be a scammer. He built a rapport with Mrs T and showed her how the 'market' was going and how it worked.

Mrs T downloaded a screen sharing software – she was told this would show her how the market was going. She was asked to open an account with a crypto exchange wallet provider ('B') – and send money to it. She set up this as a new payee. The scammer then showed her how to transfer funds from her wallet to the bitcoin 'investment' (A). Initially, a payment of £50.91 was paid back to Mrs T – so she was encouraged as her investment appeared to be doing well.

The scammer account manager showed Mrs T that her investments were doing well and she was encouraged to make further payments to the crypto wallet and then to the bitcoin investment. The payments were (continued):

| Paym ent No. | Date | Payment | Amount |
|--------------------|----------------|----------------------------------|--------|
| 1 | 20 August 2021 | Online payment – crypto wallet B | £10 |

| | | | |
|---|------------------------|------------------------------------|--------------------|
| | 23 August 2021 | Online payment – crypto wallet B | (£50.91) |
| 2 | 24 August 2021 | Online payment – crypto wallet B | £150 |
| 3 | 1 September 2021 | Online payment – crypto wallet B | £150 |
| 4 | 27 September 2021 | Online payment – crypto wallet B | £1,000 |
| 5 | 8 October 2021 | Online payment – crypto wallet B | £1,000 |
| 6 | 18 October 2021 | Online payment – crypto wallet B | £2,000 |
| 7 | 18 October 2021 | Online payment – crypto wallet B | £13,000 |
| 8 | 18 October 2021 | Online payment – crypto wallet B | £2,500 |
| | Total payments | | £19,759.09 |
| | <i>24 October 2021</i> | <i>Credit from crypto wallet B</i> | <i>(£499.91)</i> |
| | <i>25 October 2021</i> | <i>Credit from crypto wallet B</i> | <i>(£1,974.29)</i> |
| | Net loss | | £17,284.89 |

Mrs T believed the investment was doing well and saw her profits had risen by 12-18%, so she wanted to make a withdrawal. She couldn't do it on the website so she contacted the account manager and was told she needed to send more money. She then realised she had fallen victim to a scam. The investment website (A) was a fake. A few days later, two refunds totalling £2,474.20 were received, which reduced the Mrs T's loss.

As a result of what happened, Mrs T feels anxious and doesn't think she will ever recover from the stress caused. She suffers from insomnia and is unable to eat; she has lost weight. She's lost most of her spare cash and she is concerned about how to pay bills in her retirement or provide for her family.

Mrs T says Santander should've done more to protect her. The payments were out of character for her account. She recalls no interventions from Santander, other than a standard 'pop-up' when she set up the payee for the first time. Had they done so, she wouldn't have made the payments, some of which were made on the same day.

Mrs T complained to Santander in July 2023. She says Santander should refund all the payments, plus interest at 8% per annum, plus compensation of £300.

What Santander said:

In July 2023, Santander said Mrs T had authorised the payments and so they weren't liable for them. The payments weren't covered by the Contingent Reimbursement Model (CRM) Code – as they were 'me to me' payments to an account in Mrs T's name. They hadn't been able to recover any monies from the recipient bank.

Our investigation so far:

Mrs T brought her complaint to us. Our investigator upheld it. He said the first six payments weren't unusual or suspicious and were in line with Mrs T's normal banking activity. The largest payment had been £1,172.50 in November 2020.

But after that, he said Santander should've intervened from the seventh payment (for £13,000). That was sufficiently different, and to a known crypto currency exchange – to have alerted Santander. So – he said Santander should refund the seventh and eighth payments - £15,500.

But he went on to say that this should be reduced by 50% as Mrs T could've done more to protect herself:

- The promised rates of return were too good to be true.
- She agreed to download a screen sharing software, which wasn't a wise thing to do.
- She wasn't given any paperwork or other evidence that her investments were genuine.
- There were poor reviews of the firm online with Trustpilot which warned this was a scam company.
- She didn't take any investment advice before investing.

He said Santander should refund £7,750 plus 8% per annum interest.

Mrs T accepted the findings; but Santander didn't. They said:

- The payment for £13,000 wasn't flagged as Mrs T had established the payee when making the first six payments.
- The payment was to Mrs T's own account, and so there was less of an onus on Santander to question the payment.
- Santander was one step removed from where the loss took place – i.e. when the money was moved from Mrs T's crypto wallet to the 'investment'.
- It's not clear that any intervention would've prevented the payments. Mrs T had ignored the red flags up to that time, so why would anything have been different for the seventh payment?

Because Santander disagreed, the complaint has come to me to look at and make a 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.

I'm sorry to hear that Mrs T has lost money in a cruel scam. It's not in question that she authorised and consented to the payments in this case. So although Mrs T didn't intend for the money to go to a scammer, she is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. 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 Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or 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 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 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.

I need to decide whether Santander acted fairly and reasonably in its dealings with Mrs T when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary— and in this case, the payments were made to Mrs T's own account with B – her crypto wallet.

The first consideration here is: if the payments were of a sufficient size and was out of character with how Mrs T normally used her account – then we would expect Santander to have intervened and spoken to her about them. I looked at Mrs T's account, and it's fair to say that the payments were unusual compared to the way in which she used her account – which was to make day to day expenditures of low value. This included a regular monthly loan and credit card payment.

Other than that, Mrs T made frequent online (possibly in app) purchases every day for less than £1. It appears to me that this wasn't Mrs T's main account – as it doesn't show typical payments such as a mortgage, council tax, supermarket/food purchases etc. It was funded by transfers in from another bank account. There are no online payments of the type made in favour of B.

So – it's reasonable for me to say that the payments to B were, in general, unusual.

But having said that, there's a balance to be struck: Santander has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think Santander acted reasonably in processing the first six payments – because the amounts were sufficiently low.

But after that, I consider Santander should've stepped in – for the seventh payment for £13,000. This was unusual in the context of how Mrs T used her account. I hear what Santander have argued – that this was by then a known payee, but equally, this was then the seventh payment in succession to a crypto wallet platform – which was known to make

payments to crypto currency investments. It's reasonable to have expected Santander have stopped the payment and contacted Mrs T.

Santander was the expert in such matters and if they'd intervened, held the payments and contacted Mrs T we would have expected them to ask open questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How did you hear about the investment?
- How were you contacted about it?
- Where did the money come from that you're investing?
- Where is the money going to from your crypto wallet – to 'bitcoin'?
- What do you know about bitcoin investing?
- Have you made bitcoin investments before?
- How were you given the bank account details where the money was to be paid to?
- Have you given control on your devices to anyone else?

Mrs T was an inexperienced investor and there's no indication she was coached to lie or deceive Santander had they contacted her. I think it's likely she would've responded honestly to Santander – who would've found out that she:

- Was conducting the investment by email.
- Had been contacted as a result of a web search.
- Had no investment experience in bitcoin.
- Had done no research about the investment or taken independent or trusted advice.
- Had downloaded sharing software onto her computer.

This would've likely unravelled the scam and broken the spell of the scammer, and likely caused the payments to be stopped.

I'm also not persuaded that the fact the payments were going to Mrs T's own account and so appeared to be going somewhere safe and within her control should have satisfied Santander that she wasn't at risk of harm. This is because by January 2019, firms like Santander had, or ought to have had, a good enough understanding of how these scams work – including that a customer often moves money to an account in their own name before moving it on again to the scammer - to have been able to identify the risk of harm from fraud.

Therefore, in the first instance, my decision is that Santander are liable for the seventh and eighth payments - £15,500.

Contributory Negligence:

But that's not the end of the story here. I also considered whether Mrs T could've done more to protect herself and whether she should therefore reasonably share some of her losses. And I think she should. I say that as:

- She didn't do any research but accepted the 'look' of the website as being professional and sufficient to make payments. For a first-time investor – it would've been reasonable to expect Mrs T to have been more cautious.
- She didn't look at the FCA's website – which I noted showed the investment firm as 'unauthorised'. There were also some reviews online (e.g. Trustpilot) which said this firm was a scam.

- She didn't seek any independent advice from a qualified advisor, or even a trusted contact or friend.
- She agreed to download screen sharing software. It's not clear if this enabled the scammer to make the payments himself, or if Mrs T did so – but at the very least, it enabled the scammer to show Mrs T her 'portfolio' and to portray how it was 'performing'. To allow any third party to take control of a device isn't a wise thing for a reasonable person to do.

Therefore, I agree it is fair and reasonable to ask Mrs T to share 50% of her losses with Santander.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Santander took the necessary steps in contacting the bank that received the funds – in an effort to recover the money. But here, given that the scam took place in the period up to October 2021, and Mrs T didn't contact Santander until July 2023 – there weren't any funds available to return – as normally in such scams, funds are removed from the recipient bank immediately, or in a few hours.

Putting things right

Santander must refund 50% of £15,500 (£7,750) plus interest at the rate of 8% per annum simple.

My final decision

I uphold this complaint. Santander UK Plc must:

- Refund £7,750 plus interest at the rate of 8% per annum simple from the date of the seventh and eighth payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 1Fm2 February 2024.

Martin Lord
Ombudsman