

The complaint

Mrs S is unhappy that Santander UK Plc won't reimburse money she lost to a scam.

What happened

Mrs S was contacted by a company offering her work carrying out "app [application] optimisation". While doing the work she was offered "super orders", but these orders put her work account into a negative balance. She was told she would have to pay money to an account with a cryptocurrency platform ('B') to access her money.

Mrs S paid a total of £2,644 plus £84.15 in cash advance fees to B as follows:

	Date	Time	Amount	Fee
1	7 October 2023	21:42	£24	£3
2	9 October 2023	12:36	£300	£9
3	9 October 2023	17:06	£105	£3.15
4	9 October 2023	17:07	£15	£3
5	10 October 2023	12:51	£400	£12
6	11 October 2023	19:12	£1,800	£54

Mrs S says that it was only after the third super order and her third large payment of £1,800 (plus fee) that she realised she had been scammed and would not be able to get her money back. The money had been transferred out of the cryptocurrency account to the fraudsters.

Mrs S complained to Santander. She said that the bank could have flagged the payments she'd made and intervened because she'd never made payments like this on her account. It was unusual activity and Santander should have warned her about the risk of being scammed.

Santander responded to say:

- It had spoken to Mrs S to explain why it wasn't upholding her complaint. This was because it couldn't stop any credit card payments which had been authorised. She would have to have her card blocked and reissued.
- It couldn't explain why some transactions (and not others) are referred for authentication, but it reviewed its procedures on a regular basis.
- It did accept that after turning down her initial complaint, it had wrongly told her that it would raise an appeal about the outcome. This didn't happen and by way of apology it sent her a cheque for £60.

Unhappy with Santander's response, Mrs S referred her complaint to this Service. She explained the scam had left her shaken and depressed. She had been vulnerable at the time as she was employed only part time and was looking for extra ways to earn money for her family. She had lost sleep with the worry about paying back the money and the whole episode had put a huge strain on her marriage.

Our Investigator looked into Mrs S's complaint but he didn't uphold it. In summary, he said that Mrs S had authorised the credit card payments. He didn't consider the amounts or the pattern of payments she had made should have triggered intervention by Santander. He thought the spending was in line with previous spending on her account. As Mrs S had not paid the fraudster directly, he didn't think she would be able to make a successful claim under section 75 of the Consumer Credit Act 1974.

Mrs S asked for a review. She said that she is an intelligent woman and would not normally have fallen victim to a scam. But this scam had happened at a particularly vulnerable time of her life when she'd lost her job. She'd researched the company and it looked legitimate. She'd read a case on our website which was very similar to her own, where we'd decided the bank should have acted on the suspicious activity of the consumer's account. She thought Santander should at least compensate her for some of her money.

Mrs S's comments didn't persuade our Investigator to change his view, so the complaint has been referred to me.

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.

It's not in dispute here that Mrs S fell victim to a cruel scam. She accepts that she authorised the credit card payments she made to the cryptocurrency account. The starting point is that banks ought to follow the instructions given by their customers in order for their legitimate payments to be made as instructed. So Mrs S is presumed to be liable for the loss in the first instance, in circumstances where she authorised the payments.

But I've gone on to consider whether Santander should reasonably have taken any steps to intervene. As a matter of good industry practice, Santander should have 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 are many payments made by customers each day and it's not realistic or reasonable to expect Santander to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments (allowing customers ready access to their funds).

Bearing this and Mrs S's own comments in mind, I need to decide whether Santander acted fairly and reasonably in its dealings with Mrs S when it processed the credit card payments. All six payments as set out above were made to the same cryptocurrency platform.

I think Santander ought to have realised at the time Mrs S made the payments that cryptocurrency related payments like these ones carried an elevated risk of being related to a fraud or scam. But the key question here is whether the payments were sufficiently unusual or suspicious for Mrs S's credit card account such that intervention from Santander ought reasonably to have been warranted.

As I've said, there's a balance banks need to strike between identifying payments that could potentially be fraudulent and allowing customers ready access to their funds. Not all

crypto-related payments are made as a result of a fraud or a scam.

In this case, I'm not persuaded the payments were sufficiently unusual in size or frequency for Mrs S's account to say Santander ought reasonably to have intervened in the payments (but failed to) before it followed Mrs S's instructions to make them. That means I'm not persuaded Santander unreasonably failed to prevent the payments.

In making this finding, I've taken into account that the size of payments 1 to 5 were not out of character with Mrs S's general account spending. Although payments 2 to 4 were made on the same day, payment 2 was made over four hours before payments 3 and 4. Although payments 3 and 4 were made in quick succession, I don't think the size or overall pattern of payments should have meant that Santander intervened.

Payment 6 was substantially higher. But I've seen from Mrs S's account history that she'd made a single payment for a significantly higher amount than payment 6 in the six-month period before the scam.

So, in summary I find that the pattern of payments wasn't one where I think Santander should reasonably have intervened.

I appreciate Mrs S has seen a decision in which we upheld a complaint that she says is similar to her own situation. She's not referred me to the specific decision. But I should say that we consider each complaint based on its own individual facts. The deciding ombudsman will make their decision based on what is, in their opinion, fair and reasonable in all the circumstances.

In this case, and for the reasons I've given I don't consider it is either fair or reasonable for me to require Santander to compensate Mrs S (in full or in part) for the loss she has sadly suffered due to the scam.

I've thought about Mrs S's comments that she fell victim to the scam at a vulnerable time of her life. I've been sorry to read of the scam's impact on her and I don't underestimate the distress she's suffered. But I've not seen any evidence to suggest that Mrs S notified Santander that she was vulnerable at the time of the fraud such that it should have taken any additional steps to intervene in the payments before they were made.

Mrs S has not commented on our Investigator's conclusions about any possible section 75 claim against Santander. But I can say that our Investigator did correctly explain the "debtor-creditor-supplier" relationship that is required for a successful section 75 claim.

Mrs S had to chase for a response to her complaint after Santander told her an appeal had been raised. She's not specifically commented on this. But for completeness, I think Santander's apology and payment to Mrs S of £60 was a fair response.

In closing, I've noted that Mrs S is understandably concerned about how she will afford to repay Santander the money she lost to the fraud. Our website does include information about the help available to consumers who are facing financial difficulties. Our Investigator can direct Mrs S to the relevant section if that would be helpful to her.

My final decision

For the reasons I've explained, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 28 February 2025.

Amanda Maycock
Ombudsman