

The complaint

Miss M complains that Santander UK Plc didn't do enough to protect her when she fell victim to a scam and won't refund the money she lost.

What happened

Miss M was introduced to a crypto investment by a friend on social media. Although, sadly, it later turned-out Miss M's friend's social media account had been hacked and she was actually in contact with a scammer.

The scammer advised Miss M she could invest in Bitcoin mining and that she would make money instantly. Miss M was directed to set up a trading account with a company I'll refer to as "E". Miss M was then instructed to purchase crypto via a legitimate crypto exchange ("S"), which she then sent to E's trading platform. Miss M reports that she saw her deposits reflected in her trading account, which she found reassuring. Miss M believed this initial investment had performed well – with the scammer telling her she'd made £12,000 profit - and so she tried to make a withdrawal. But she was told that as her profits had increased, she needed to make a further deposit to cover broker fees, but this time on another "bigger" trading platform, which I'll refer to as "C".

Miss M then made a £1,500 payment, again via S. Miss M said that rather than covering the broker fees as she expected, her deposit was added to her investment which led to an increase in her profits and then a request for more money to enable a withdrawal. Miss M then made further payments while trying to withdraw her profits. The later payments were sent to another legitimate crypto exchange 'M'.

In total, between 29 March and 1 April 2022, Miss M made the following payments:

Payment number	Date	Payment type	Amount
1	29 March 2022	Card payment to S	£700
2	29 March 2022	Card payment to S	£1,500
3	30 March 2022	Faster payment to M	£3,000
4	31 March 2022	Faster payment to M	£3,000
5	1 April 2022	Faster payment to M	£3,000
		Total	£11,200

Miss M said she realised she'd been scammed when the scammer continued to pressure her to make further payments to cover fees. She then reported the scam to Santander and asked for help recovering the money. Santander said that as the money had been transferred to accounts in her own name (accounts held with S and M) they were not covered under the Contingent Reimbursement Model (CRM) and so Santander was not responsible for the loss.

In August 2023, Miss M complained to Santander, via a professional representative, that it failed to protect her from the risk of financial harm from fraud. Miss M's representative argued that Santander ought to have intervened from the first payment and provided her with

an effective warning advising her of the risks of fraud. It said had Santander done so it could have prevented Miss M's entire loss. It therefore requested a full refund of Miss M's loss plus 8% interest and £250 compensation.

Santander didn't accept responsibility for Miss M's loss. It maintained that the payments were not covered by the CRM and so it was not responsible for her loss. It also explained she did not meet the criteria to make a successful chargeback claim in respect of the card payments.

Unhappy with Santander's response, Miss M referred the complaint to the Financial Ombudsman. Our Investigator upheld the complaint in part. She concluded that Santander ought to have intervened on the third payment given the size of the payment and the fact that it was identifiably going to a crypto provider, which Santander ought to have recognised as posing an increased risk to Miss M. Our Investigator said Santander should have presented Miss M with a tailored warning that highlighted the key risks of a crypto investment scam. She considered that had it done so Miss M would not have gone ahead with the payments. But she also considered that Miss M should be held jointly responsible for her loss because, had she carried out some basic checks into what she was being told, she could have uncovered the scam.

While Miss M accepted our Investigator's opinion, Santander didn't agree it should be held responsible for any of the loss. It noted that the funds had credited accounts in Miss M's own name and control before being transferred into the control of the scammers. It suggested that Miss M should therefore pursue S and M for her losses. It also referred to the Supreme Court's decision in *Phillip v Barclays Bank Plc* and noted that, where the bank receives a payment instruction from a customer which is clear and leaves no room for interpretation, the bank's primary duty is to execute the payment instruction. It said that whilst some of the payments did flag on its security system, Miss M was sent text messages to confirm that she had made the payments and calls were made, during which scam conversations would have taken place.

Our Investigator explained that, while incomplete, the evidence suggested that Santander's call to Miss M was automated, and that the payment was completed without anyone speaking with her. Our Investigator also concluded that, while there was no evidence Miss M responded to Santander's text message before the payment was processed, the most she'd have expected Santander to do at this stage was confirm that it was Miss M making the payment. And this wouldn't have uncovered the scam as there was no suggestion Miss M hadn't made the payments herself. But our investigator maintained that by the third payment Santander ought to have been sufficiently concerned Miss M was at risk of financial harm and provided her with a tailored warning relevant to crypto investment scams, which Miss M would have taken heed of and not made further payments.

Santander still disagreed and maintained it was not responsible for the loss. As there's been no agreement, the case has been passed to me to decide.

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'm upholding this complaint in part and for largely the same reasons as our 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 Miss M 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, and 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.

Should Santander be held liable for Miss M's loss?

At the outset, I want to address Santander's broad concerns about whether it should reasonably be held liable, given Miss M loss did not take place directly from her Santander account, but rather was first transferred into a legitimate crypto wallet that was in her name and control.

It is disappointing to see that Santander has continued to raise these arguments, despite receiving multiple decisions which clearly set out our position in relation to multi-stage scams, such as the one Miss M fell victim to. But for the sake of completeness, I will address Santander's concerns here.

Whilst Santander was not obliged to make checks, I am satisfied that, taking into account regulatory expectations and requirements and what I consider to have been good practice at the time, it should fairly and reasonably have been on the look-out for the possibility of authorised push payment fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.

The potential for multi-stage scams ought to have been well known to Santander and as a matter of good practice it should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams – particularly those involving crypto.

Should Santander have intervened in the payments and would it have prevented Miss M's loss?

There is some evidence to suggest that Santander did contact Miss M by text message and via an automated telephone service when she made her first payment. Santander has been unable to provide evidence of the text message or the call recording, but it seems most likely in the circumstances that Santander was seeking to clarify that Miss M had in fact authorised her payments.

While I have not been provided with full evidence of what happened at this time, in the circumstances, I would not have expected Santander to take any further action than clarifying that the payment was authorised. And given that Miss M was knowingly making these payments, I do not think such intervention would have prevented her loss.

While Santander has suggested it provided Miss M with some scam education or warnings as part of this intervention, without clear evidence of the form and content of the messages I cannot reasonably conclude they were proportionate or effective, particularly given Miss M carried on with the payments.

I would not have expected Santander to intervene on Miss M's second payment. While it was not completely in keeping with her usual account activity it was also not so unusual or suspicious that I think Santander ought to have recognised a clear risk at that stage. But by the third payment I think Santander ought to have been sufficiently concerned.

By this time Miss M had made three payments totalling £5,200 to two different crypto platforms in little over 24 hours, with the value of the transaction roughly doubling each time. This was not in keeping with her usual account usage – her previous 12 months usage shows modest day-to-day spending, with transactions up to a few hundred pounds at a time - and I think it ought to have stood out as a potentially suspicious, such that Santander ought to have intervened.

Had Santander intervened before processing the £3,000 payment on 30 March 2022 – whether this was through a tailored written warning addressing the key risks of crypto investment scams or speaking with Miss M to understand more about her payment – I think it is most likely the scam would have been exposed and Miss M would not have lost any more money.

I have reached this conclusion as there is clear evidence within the scam chat that Miss M had some suspicions about what she was being told by the scammer from the beginning. While Miss M did not proactively take steps to understand or mitigate the risk associated with what she was doing (which I will address further below) I think it does suggest that she would most likely have been open to a warning from her trusted bank. I think it's also relevant that at the time of the third payment, Miss M was being asked to pay further fees to make a withdrawal. As this is a key indicator of a scam, I think intervention from Santander ought to have uncovered what was happening and Miss M would not have gone ahead with the future payments.

In these circumstances I am satisfied it is fair to hold Santander at least partially responsible for Miss M's losses.

Should Miss M bear some responsibility for her loss?

I have thought carefully about whether Miss M should bear some responsibility for her loss by way of contributory negligence (which might justify a reduction in compensation). And I think she should.

When considering whether a consumer has contributed to their own loss, I must consider whether the consumer's actions showed a lack of care that goes beyond what we would expect from a reasonable person. I must also be satisfied that the lack of care directly contributed to the individual's losses.

Having considered the overall circumstances of what happened, I'm not persuaded Miss M took reasonable care to protect herself from the risk of financial harm. I consider that a reasonable person would have had enough reason to question the legitimacy of what was going on, and would ultimately not have made the payments, I say this because:

- Miss M was sceptical about what she was being told from the outset, and crucially before she decided to invest. In one chat she said *"Also what are the risks? Sorry seems to good to be true?"* Despite her understandable scepticism she did not take any further steps to check what she was being presented with was legitimate, including when the scammer told her *"This is 100% guaranteed funds back ok"*.
- Miss M ought to have realised what she was being told was too good to be true. She was told that she had made £12,000 profit from a £700 deposit within 24 hours.
- Miss M made further payments to the scammer for fees which were completely disproportionate to the initial sum she had invested – in total Miss M paid £10,500 in fees - despite being advised she would only pay 5% broker fees.

- Miss M continued to make further payments even when it was clear the scammer was breaking her promises – after paying one of the fees Miss M was told *“this is literally the last deposit you’ve to make ok trust me”*, but then was asked for further fees.

I think it is fair in the circumstances that Santander and Miss M share equal responsibility for the loss she suffered.

Putting things right

As I’ve concluded that Santander and Miss M were equally responsible for the loss, I consider Santander should refund 50% of payments 3 to 5. It should also add 8% simple interest on to the award to compensate Miss M for the loss of use of those funds. I do not consider it would be appropriate to award further compensation in respect of Miss M’s non-financial loss in the circumstances. Nor will I make any award in respect of her legal fees, as Miss M was able to bring her complaint to the Financial Ombudsman for free.

My final decision

I uphold this complaint in part and instruct Santander UK Plc to pay Miss M:

- 50% of the payments 3 – 5, which totals £4,500, plus
- 8% simple interest per year on each payment from the date of each payment to the date of settlement (less any tax properly deducted).

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss M to accept or reject my decision before 11 July 2024.

Lisa De Noronha
Ombudsman