

The complaint

Miss W complains that Santander UK Plc won't refund the money she lost, after she fell victim to an investment scam.

Miss W is represented in bringing this complaint, but for simplicity's sake I've generally referred to her in the text of the decision.

What happened

I issued my provisional decision on this complaint on 14 March 2024. The background and circumstances of the case and the reasons why I was minded to uphold the complaint in part were set out in that decision. I have reproduced the provisional decision in italics below:

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, I understand it to be as follows.

In or around April 2022 Miss W saw an advert on social media regarding an investment opportunity. She followed a link and entered her details and within a few weeks she began to receive phone calls. Believing it to be a legitimate investment, Miss W made the following two international payments from her Santander account;

<i>7 April 2022</i>	<i>£3,704.08</i>
<i>4 May 2022</i>	<i>£3,939.35</i>

But unknown to her at the time, Miss W had been dealing with fraudsters and had sent money to an account the fraudsters controlled. Miss W realised something was wrong when she told the person who she was speaking to about the investments, that she didn't have any more money to invest, following which contact with the fraudsters was lost.

Miss W raised the matter with Santander, who looked into her complaint but didn't uphold it. It considered the Contingent Reimbursement Model (CRM code), which is a scheme that came into force in May 2019 and that Santander is signed up to. The CRM Code provides increased protection for customers who are the victim of scams in all but a limited number of circumstances. But Santander said Miss W's claim didn't meet the requirements to be reviewed under the code, as the payments were made by international transfer. Overall, it didn't consider it should be held liable for the loss.

Unhappy with Santander's response, Miss W brought her complaint to this service. One of our Investigator's looked into things, but didn't think the complaint should be upheld. In summary, it was our Investigator's view that the payments Miss W made wouldn't have appeared as particularly unusual or suspicious to Santander, when considering her normal account and payments activity. So, he didn't think Santander had missed an opportunity to identify the payments were being made in relation to a scam.

Miss W didn't agree with our Investigator's opinion. In summary she said she'd made two high value international payments which were considerably higher than her usual spending,

so she thought Santander should have intervened to ensure she wasn't falling victim to a scam.

As agreement couldn't be reached the complaint has been passed to me for a decision.

What I've provisionally 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.

As identified by Santander these payments are not covered by the Contingent Reimbursement Model (CRM) code. But I have taken into account other guidance and good industry practice, as well as Santander's account terms and conditions when thinking about what a fair outcome is, in this case.

The payments made to the scam were 'authorised'. So, even though she didn't intend the payments to go to a fraudster, the payments were 'authorised' under the Payment Services Regulations. Santander had an obligation to follow the payment instructions it received, and Miss W is presumed liable for the losses in the first instance.

But that's not the end of the story. Taking into account the law; regulator's rules and guidance; relevant codes of practice, what I consider to have been good industry practice at the time, and Santander's own account terms and conditions, I consider that Santander should:

- Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.*
- 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 (amongst 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 its customers from the possibility of financial harm.*
- Santander's general account terms say it can refuse a payment instruction if it reasonably suspects it relates to fraud or any other criminal act. Also that it can delay payments while fraud prevention checks take place and explained that it might need to contact an account holder if it suspects that a payment is fraudulent. It said contact could be by phone.*

So whilst Santander was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding 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 fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Santander, do.

Should Santander have fairly and reasonably made further enquiries before processing Miss W's payments?

In the individual circumstances of this complaint, I'm persuaded there was enough going on to have given Santander cause for concern that Miss W may have been at risk, at the time she made her first payment. I say that as when looking at Miss W's account statements, for the twelve months leading up to the scam, the typical account activity is for much lower value direct debits or card payments. With the exception of one payment for £1,000, the only other payments in excess of £1,000 appear to be a regular monthly payment to the same, existing payee.

There also isn't any evidence to suggest that Miss W has made any international transfer payments within this time. So I think an international payment to a new payee, for a significantly higher amount than the typical spend was an indicator of an increased level of risk. I'm persuaded it ought to have caused the bank concerns and prompted an intervention to ask why Miss W was sending such a large sum of money out of the country.

Would an intervention have made a difference?

Where I'm minded to say that Santander ought to have intervened more than it did, this in itself isn't enough for me to say that Santander should refund the money Miss W has lost. I also need to be persuaded that its intervention would have made a difference and prevented the payments from being made. This is often finely balanced and I have to base my findings on the balance of probability – that is, what I think is more likely than not to have happened, taking into account what I know.

Had Santander intervened further, as I think it ought to have done, I'm persuaded, on balance, it would have made a difference and Miss W wouldn't have gone ahead with the first, or the subsequent payment. I say that as Miss W wasn't given a cover story by the fraudsters, so I think she would have answered any questions Santander put to her freely. I think Miss W would have told Santander she was intending to invest and what returns she could achieve. With this, I think the level of returns Miss W was told she could expect, of \$36,000 within a few months, would have seemed implausible to Santander.

Alongside this, with proportionate questioning from Santander, I think Miss W would have also revealed that she'd tried to carry out some research, but couldn't find the website for the company and that she'd received over 30 calls in a single day, from the fraudsters in their pursuit to get her to invest. I'm persuaded all of these things would have sounded very much like a scam to Santander.

Miss W has said she did have her suspicions when she received so many calls from the fraudsters. I think it's more likely than not that these suspicions would have been magnified if Santander had clearly warned her about the common features of investment scams and how they related to the payment she was intending to make. So much so, that I don't think Miss W would have continued with the payment and therefore her losses would have been prevented from this point. I don't think she would have wanted to jeopardise losing such a considerable amount of money.

For this reason I think Santander is, at least in part, liable for the money Miss W has lost.

Should Miss W bear some responsibility for her losses?

I've also thought carefully about Miss W's role in what happened. I understand that Miss W has said she built a rapport when she was first contacted by the fraudster and she was given access to a platform where she could see her investments. As well as this she's said she'd received a call from what she thought was a compliance team, which gave her confidence that she was dealing with a legitimate business. But I'm afraid I think Miss W ought to have had more concerns along the way about what she was being told.

I can't see that she carried out reasonable due diligence. Miss W has said she was told she could realise a return of \$36,000, against a \$10,000 investment, within just a few months. I think this ought to have appeared to her as concerningly unrealistic, to the point of being implausible and too good to be true.

I'm also mindful that Miss W has said that she attempted to check the company's website but it wasn't working. While I'm mindful she was told that it was under maintenance by the fraudster, in the absence of being able to find any other online information about the company she was supposedly investing in, I think she reasonably ought to have proceeded with more caution than she did. I also don't think a legitimate investment firm would have been so relentless with the pressure that seemingly was being applied, in making over 30 calls in a single day to secure the deal.

In and of themselves it's arguable that any one of the above factors, in isolation, may not have been enough to alert Miss W to the potential risk. But when taken collectively, I'm persuaded there was enough going on that ought to have given Miss W cause for concern that things were not as they seem.

Overall, I can't see that Miss W had enough basis to reasonably satisfy herself that this was a genuine investment, rather I think she's taken things at face value. So I don't think I can fairly hold Santander solely responsible for Miss W's loss. Therefore, I'm satisfied that Miss W's lack of due diligence and failure to question what she was being promised contributed to her loss, such that she should share responsibility with Santander. Because of this, I'm satisfied a 50% deduction is fair and reasonable in the circumstances.

Recovery

Finally, I've looked to see whether Santander did all it could to recover Miss W's funds once notified of the scam. I am satisfied that Santander took the necessary steps required of it in seeking to try and recover funds from the beneficiary bank (the bank to which the money was paid), but unfortunately it wasn't able to recover any of the money Miss W had sadly lost.

My provisional decision

For the reasons given above, my provisional decision is that this complaint should be upheld in part and that Santander UK Plc should;

- Refund Miss W 50% of the money she lost to the fraudsters, being £3,821.72 (50% of £7,643.43).*
- Pay 8% interest on this amount, calculated from the date of the transactions to the date of settlement.*

In my provisional decision I asked both parties to send me any further evidence or arguments that they wanted me to consider by 28 March 2024.

Miss W responded to say she had nothing further to add and was happy with the outcome. Santander didn't respond to my provisional 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.

As Miss W has agreed with my provisional decisions and as Santander hasn't provided anything new for me to consider, I see no reason to depart from the conclusions I indicated in my provisional decision. I therefore continue to be of the view that this complaint should be upheld in part.

Putting things right

Santander UK Plc should;

- Refund Miss W 50% of the money she lost to the fraudsters, being £3,821.72 (50% of £7,643.43).
- Pay 8% interest on this amount, calculated from the date of the transactions to the date of settlement.

My final decision

My final decision is that I uphold this complaint against Santander UK Plc in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 22 May 2024.

Stephen Wise
Ombudsman