

The complaint

Miss A complains that Santander UK Plc didn't do enough to protect her when she fell victim to an investment scam.

What happened

Between November 2020 and April 2021 Miss A fell victim to an investment scam. She'd known the scammer for some time and felt they could be trusted due to the community she met them through and shared values. She invested money on her own behalf and on behalf of her mother, all through her bank account with Santander. Initially Miss A received the expected returns from her investment, up until April 2021, but then the payments stopped being received and the scammer disappeared. Miss A reported the scam to Santander and asked for a refund of the amount she'd lost.

Santander initially looked to recover her funds from the accounts she sent them to. Then it issued a further response on her case and said it thought this was a civil matter and not a scam. Our investigator agreed with Santander, so Miss A asked for an ombudsman to reconsider her case.

I issued a provisional decision on this case in April 2024. My findings were as follows:

The Contingent Reimbursement Model Code (the Code) sets out when a bank should reimburse an authorised push payment (APP) scam victim and it provides increased protection for customers who are the victim of scams. Our investigator wasn't persuaded that Miss A fell victim to a scam with these payments. I have reviewed the case and I don't agree. I think this investment opportunity was most likely a scam.

I have found information online which suggests that the individuals Miss A has named as part of this investment were operating a scam. I also think the investment opportunity shows a number of concerning factors (which I'll detail more below) and is indicative of a Ponzi scheme, which would fall under the Code. While I accept Miss A did receive cryptocurrency from the person she's said scammed her, we can see payments were made for this separately to the investment. And the payments for and receipt of cryptocurrency aren't discussed/included in the message chain we've received which discusses the investment scam. So it does seem to me this was a separate matter, as Santander originally thought. So I've then gone on to consider whether Miss A is due a refund under the Code for her investment payments.

There are Exceptions under the Code that mean even if the consumer has fallen victim to an APP scam and the firm didn't meet the standards required of it, the consumer may then not be due a refund. So I've considered whether any of these apply. I consider the relevant exceptions in this case are around whether Miss A held a reasonable basis for belief that this was a legitimate venture. And whether an effective warning by Santander would've made any difference to what happened here.

Did Miss A hold a reasonable basis for believing she was transacting with legitimate parties for legitimate purposes?

I accept that Miss A believed this was a legitimate investment opportunity. But the test I have to apply is whether or not she held a reasonable basis for believing this.

I accept Miss A's version of events shows how she'd been told a number of things that made the opportunity appear legitimate. The name of a real business was being used and other people had invested and seen returns. So I accept why she had 'belief'. But what I can't safely say is that the evidence shows her decision to invest was founded on a *reasonable basis* for belief.

Miss A understood that she was investing through firm 'R', but she never saw any evidence the person she paid was involved with R. She was presented with the investment opportunity verbally then through a brief whatsapp text message from the scammer. She never received any formal paperwork or had any actual contract with R. I accept the scammer chose to target a particular tight-knit community which had a foundation of integrity and honesty, which added further legitimacy to the scam. But I also think this meant Miss A didn't ask reasonable questions of the scammer or challenge the opportunity in the way she needed to. So her basis for belief wasn't founded on the level of evidence or information it reasonably should have been.

From what Miss A has told us she did little research into this opportunity due to her personal trust in the scammer. And I haven't seen that she held any physical evidence to suggest this was a legitimate venture; or that the party she was paying was employed by or in any way linked to the business she thought she was investing with. It seems she sent the money on trust that it would be invested in the way she was verbally told. So based on the evidence we hold, I haven't been able to establish a reasonable basis for belief on Miss A's part, especially as she's reported to us she invested over £100,000.

Should Santander have done anything to warn Miss A against making the payments?

I accept that Santander ought to have provided Miss A with a detailed scam warning when she made the first payment toward the scam investment. While it did give her a warning, it wasn't detailed or effective in her situation. Initially, she was moving £15,000 to a new payee and this was very out of character for her. And then she sent £10,000 straight after to another new payee. But no other warnings were given after the first payment.

But I then have to consider whether a warning or any intervention would have made a material difference in this case. And I'm not persuaded it would have.

It can be reasonably assumed that, if asked about the investment opportunity, Miss A would have explained the relationship she had with the scammer and that she trusted them. She selected 'Paying a friend' as her payment reason, not anything to do with investing. And she also trusted others who were investing in the same thing (or she

at least believed they were) and they'd already received returns. So she felt confidence in the opportunity.

I think it would have been difficult for Santander to know Miss A was being scammed based on the information she'd have shared. Or for it to prevent her wanting to go ahead due to a warning. I think, had it engaged with her, it would've directed her to do more research, but I don't consider she would've stopped making the payments due to this advice. And as above, the end firm she believed she was investing with appeared legitimate at this time and I think this is what she would've shared with Santander if asked.

I've also concluded this because, while I accept Santander didn't do what it should have and provide Miss A with effective warnings and scam education, she did receive the promised returns for several months. So after the first payment, she would've been more convinced and told Santander that the investment was operating as expected. She'd been recommended this opportunity and given assurances from people she knew and trusted. And these were seemingly proving to be honest. And we know she felt so sure of the opportunity she continued to invest at a high rate. So I'm not persuaded that Santander's failure to give effective warnings has had a material effect on the scam or Miss A falling victim to it.

Should Miss A receive a refund from Santander?

As I have set out above, I don't believe Miss A is due a refund under the Code. I consider two Exceptions under the Code apply in this case – R2(1)(c)(iii) – as Miss A did not have a reasonable basis for believing that the scammer was legitimately operating a legitimate investment business. And R2(2)(a) – as I don't agree that the omission by Santander to provide effective warnings impeded Miss A's ability to avoid falling victim to this specific APP scam.

I've then considered whether she is due a refund by any other means, but I don't agree Miss A is. I have already covered above why neither a warning nor a more specific intervention would have prevented her going ahead in this case. And Santander did attempt to recover her funds but was unable to do so.

Santander responded saying it still believed this was a civil matter, but accepted the decision the claim should be declined. Miss A's representative responded saying she should receive a 50% refund as Santander had made mistakes. Her representative set out that she believed she was transacting with legitimate parties; she wasn't able (like Santander was) to identify the transactions as a fraud or scam; she believed the investment was genuine; and that Santander didn't take reasonable steps to warn Miss A of the scam. So the case has been passed back to me for a final 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 have carefully considered Miss A's representative's response, but I see no reason to change the findings from my provisional decision.

I already explained, as set out above, why I didn't consider Miss A's basis for belief was reasonable. I accepted that she had 'belief' and why she had this. But that isn't the test that applies here.

I also accepted Santander should've provided her with a warning, but said this wouldn't have prevented this scam. Miss A's representative has suggested a 50:50 split due to the lack of warning, as it's said otherwise Santander won't learn. But our service isn't here to regulate or punish firms, it's here to impartially review a case and issue a fair outcome based on the evidence.

While the representative has said that "*persistent warning and advice*" would've prevented Miss A's loss, it hasn't provided any further evidence this was the case. It wouldn't be fair to award shared liability when I can't see how Santander's failure actually led to Miss A's loss. I have already explained why I consider she would've gone ahead with the investment even after a warning. And the fact the representative has said Miss A needed 'persistent' warnings I think adds weight to my argument that she was heavily invested and under the spell of the scam. And it would've taken a lot from Santander, more than it was required to do, to stop this scam.

I do still consider Miss A fell victim to a scam and that this wasn't a civil matter. But I'm not directing Santander to award her any funds, as I don't consider she had reasonable basis for her belief this was a legitimate venture run by a legitimate person. And I can't agree that the actions Santander should've taken in this case would've prevented the losses Miss A is now claiming for.

My final decision

For the reasons set out above, I don't uphold Miss A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 7 June 2024.

Amy Osborne
Ombudsman