

The complaint

Miss O complains that Santander UK Plc (Santander) won't refund any money she lost in an investment scam.

What happened

What Miss O says:

In December 2022, Miss O was introduced to a crypto currency investment opportunity by her mother, who initially wanted help in withdrawing her funds. Her mother went on to say she had made good profits and Miss O became interested herself. She had a new-born child to support and needed the extra money.

Miss O corresponded with the scammer and was shown how the 'investment' worked. She was shown the website which looked professional and had live trade and up to date market information on it.

Initially, Miss O paid some fees to help her mother gain access to her account. But after that, the scammer suggested that Miss O invest herself. He explained that the more money she invested the more she would make – as she went up to higher levels of returns. She felt pressurised by the scammer to put more and more money in.

The payments were:

| Date | Payment | Amount |
|-----------------|---|----------------|
| 4 February 2023 | Debit card to crypto exchange (1) | £190 |
| 4 February 2023 | Debit card to crypto exchange (2) | £220 |
| 4 February 2023 | Debit card to crypto exchange (2) | £30 |
| 5 February 2023 | Debit card to crypto exchange (2) | £150 |
| 5 February 2023 | Debit card to crypto exchange (2) | £200 |
| 7 February 2023 | Debit card to crypto exchange (3) | £105.99 |
| 7 February 2023 | Debit card to crypto exchange (3) | £250.18 |
| 7 February 2023 | Debit card to crypto exchange (3) | £291.38 |
| 9 February 2023 | <i>Declined debit card to crypto exchange (3)</i> | <i>£672.44</i> |
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| 9 February 2023 | <i>Declined debit card to crypto exchange (3)</i> | £672.44 |
| 9 February 2023 | <i>Declined debit card to crypto exchange (3)</i> | £311.97 |
| 9 February 2023 | Debit card to crypto exchange (3) – <i>investigator's proposed intervention</i> | £672.79 |
| 10 February 2023 | Debit card to crypto exchange (3) | £517.95 |
| 11 February 2023 | Debit card to crypto exchange (3) | £1,100 |
| 11 February 2023 | Debit card to crypto exchange (3) | £620.94 |
| 14 February 2023 | Debit card to crypto exchange (3) | £620.94 |
| 14 February 2023 | Debit card to crypto exchange (3) | £528.53 |
| 17 February 2023 | Debit card to crypto exchange (3) | £1,033.41 |
| 17 February 2023 | Debit card to crypto exchange (3) | £827.33 |
| 18 February 2023 | Debit card to crypto exchange (3) | £868.55 |
| 21 February 2023 | Debit card to crypto exchange (3) | £106.09 |
| 21 February 2023 | Debit card to crypto exchange (3) | £28.82 |
| 23 February 2023 | Debit card to crypto exchange (3) | £729.46 |
| 23 February 2023 | Debit card to crypto exchange (3) | £477.02 |
| 25 February 2023 | Debit card to crypto exchange (3) | £435.80 |
| 25 February 2023 | Debit card to crypto exchange (3) | £106.09 |
| 25 February 2023 | Debit card to crypto exchange (3) | £33.96 |
| 25 February 2023 | Debit card to crypto exchange (3) | £379.13 |
| 7 March 2023 | Debit card to crypto exchange (3) | £2001.94 |
| 8 March 2023 | Debit card to crypto exchange (3) | £724.30 |
| 11 March 2023 | Debit card to crypto exchange (3) | £837.64 |
| 12 March 2023 | Debit card to crypto exchange (3) | £507.93 |
| 15 March 2023 | Debit card to crypto exchange (3) | £1,017.95 |
| 15 March 2023 | Debit card to crypto exchange (3) | £497.63 |
| 22 March 2023 | Debit card to crypto exchange (3) | £518.23 |
| 22 March 2023 | Debit card to crypto exchange (3) | £254.46 |

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| 22 March 2023 | Debit card to crypto exchange (3) | £260.64 |
| 23 March 2023 | Debit card to crypto exchange (3) | £350.29 |
| 24 March 2023 | Debit card to crypto exchange (3) | £497.63 |
| 24 March 2023 | Debit card to crypto exchange (3) | £626.42 |
| 28 March 2023 | Debit card to crypto exchange (3) | £930.37 |
| 29 March 2023 | Debit card to crypto exchange (3) | £724.30 |
| 29 March 2023 | Debit card to crypto exchange (3) | £724.30 |
| 30 March 2023 | Debit card to crypto exchange (3) | £415.19 |
| 30 March 2023 | Debit card to crypto exchange (3) | £209.12 |
| 30 March 2023 | Debit card to crypto exchange (3) | £209.12 |
| 30 March 2023 | Debit card to crypto exchange (3) | £209.12 |
| 30 March 2023 | Debit card to crypto exchange (3) | £209.12 |
| 31 March 2023 | Debit card to crypto exchange (2) | £310 |
| Total payments | | £22,562.06 |

To fund the investments, Miss O borrowed on various loans from her Father and Step-Mother (£8,000), plus another six loans from various lenders.

The scam came to light when Miss O wanted to withdraw funds – but no money was sent back to her. She then realised she'd been scammed.

As a result of the scam, Miss O has suffered from anxiety and trust issues. Because her mother was involved it had caused problems within her family. She now has to pay back seven loans. She's therefore lost any financial security and is concerned she may not be able to provide for her young child.

Miss O says Santander should've done more to protect her. She was making large payments in respect of crypto currency purchases in a short period of time. She didn't get any warnings from Santander and there wasn't any effective intervention by the bank. If Santander had contacted her, she says it would've been clear the investment wasn't legitimate and her losses would've been prevented.

What Santander said:

The bank didn't refund any money. It said that as the payments were made by debit card, they were not covered by the Contingent Reimbursement Model (CRM) code.

Our investigation so far:

Our investigator upheld Miss O's complaint with effect from the payment for £672.79 on 9 February 2023. He said:

- By that point, Santander should've been aware Miss O was at risk of harm.
- She was making payments to three different crypto exchanges.
- The value of the payments wasn't large but there was a pattern of increasing values – a known sign of a scam.
- Miss O didn't have a history of making multiple payments in a short space of time, so these were unusual.
- Miss O was using her overdraft to fund the payments.
- Santander had declined some payments on 4 February 2023 – the bank messaged Miss O and she confirmed she wanted to go ahead.
- And just prior to the payment for £672.79 on 9 February 2023, the bank declined two other payments for similar amounts – so it was reasonable that Santander might have seen that Miss O was being scammed and should've intervened.
- He noted that the payment for £1,100 on 11 February 2023 hadn't been stopped in line with the bank's policy.
- He had taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC* [2023]; he said Santander had the right (but not the obligation) to stop payments where it suspected that a payment could be fraudulent.
- So, while Santander was not required or obliged to make checks, he was satisfied that, taking into account longstanding regulatory expectations and requirements, and 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.

If the bank had intervened, our investigator said the scam could've been uncovered.

But he said Miss O should be responsible for 50% of her losses as:

- Her mother was having difficulty in making withdrawals.
- Miss O made payments to the scammer to help her mother withdraw funds.
- Despite this Miss O went ahead and invested her own money, taking out loans to do so.
- She didn't get any adequate information about the 'investment'.

Miss O accepted this but Santander didn't. The bank said:

- Because the terms and conditions didn't oblige the bank to make fraud checks, they didn't have to.
- The point of loss was at the crypto exchanges, not when the payments were made from Santander. The bank said it wasn't liable and Miss O (and ourselves) should go to the crypto exchanges with Miss O's complaint to get them to make refunds.

Santander asked that an ombudsman look at Miss O's complaint and so it has come 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.

I'm sorry to hear that Miss O 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 she 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 Miss O 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) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to 'faster payments' made to a UK beneficiary – and in this case, the payments were made by debit card.

Of themselves, none of the payments were particularly significant in value and Miss O had made payments of similar value in the months before the scam – I can see that she made regular payments of up to around £500 fairly regularly.

And - there's a balance to be made: Santander has certain duties 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 early payments – up to 9 February 2023.

But then, as our investigator said – Santander declined four payments to a crypto exchange on the same day. And shortly thereafter (on the same day again), Miss O made a payment of £672.79 to the same crypto exchange.

And – by this time, Miss O had made nine payments in five days to crypto exchanges – totalling over £2,100 (and attempted another four). So that was in quick succession, and a clear pattern had been established. And such a spending pattern was out of character with how she normally used her account – there were no other such occurrences in the previous 12 months.

I also noted that Miss O was using her overdraft to fund the payments.

And as Santander will be aware, we expect that from 1 January 2023, firms ought to recognise that cryptocurrency related transactions carry an elevated risk of the likelihood of

the transaction being related to a fraud or scam. This is because, by this time many leading firms (including Santander) had appreciated this risk and placed blocks or restrictions on cryptocurrency related transactions, and there had been widespread coverage in the media about the increase in losses to cryptocurrency scams.

So here, I agree with our investigator – given all of what was going on here, it is reasonable to have expected Santander to have intervened, contacted Miss O and asked her what was going on.

Santander was the expert in such matters and if they'd intervened, held the payments and contacted Miss O 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?
- What do you know about crypto investing?
- Have you made crypto 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?

I'm persuaded that had this have been done it's likely that the scam would have been uncovered and the payments from that point prevented.

I considered Santander's points about its liability where the payments in question are sent to a third party – i.e. Miss O's crypto wallet.

And here, I'm not persuaded that the fact the payments were going to Miss O'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.

Santander will be (or should be) well aware of our approach in this regard.

I considered Santander's points about the Supreme Court's decision in *Philipp v Barclays Bank UK PLC* [2023]. This established that (based on Santander's terms and conditions) that they had the right (but not the obligation) to stop payments where it suspected that a payment could be fraudulent. And so, it is reasonable to have expected Santander to intervene here – as there were reasonable indications that a fraud was taking place.

So, Santander is liable in the first instance to refund the payments made from (and including) the one for £672.79 on 9 February 2023. This is approximately £21,122.

Contributory Negligence:

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

In thinking about this - we apply a test of what we would expect a reasonable person to do in the circumstances. We don't (for example) apply a test of what we would expect a finance professional to do. I noted that:

- Miss O's mother was have difficulty in making withdrawals. So – Miss O should've been on guard and been more careful before sending money.
- Miss O made payments to the scammer to help her mother withdraw funds. This wasn't a logical thing to do, despite Miss O wanting to help her mother.
- I didn't see any evidence that Miss O checked out the 'investment' firm used by the scammers – for example by online reviews of checking the FCA's register on its website.
- Despite this Miss O went ahead and invested her own money, taking out loans to do so.

Therefore, Miss O should bear responsibility for 50% of her losses. So, she should receive approximately £10,561 plus interest at 8% per annum simple.

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 lost money.

And here, the funds went from the bank account to a crypto currency merchant and the loss occurred when crypto was then forwarded to the scammers. In this case, as the funds had already been forwarded on in the form of cryptocurrency there wasn't likely to be anything to recover.

I noted that Santander attempted to get refunds through the voluntary chargeback process. This was never going to be successful – as the service had been provided by the crypto exchanges i.e. the currency had been purchased. **(continued for final decision)**

My final decision

I uphold this complaint. Santander UK Plc must:

- Refund 50% of the payments from (and including) the payment for £672.79 on 9 February 2023, plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 7 February 2025.

Martin Lord
Ombudsman