

The complaint

Miss A complains that Santander UK Plc (Santander) won't refund the money she lost to an investment scam.

What happened

I issued my provisional decision on this complaint on 17 May 2024. I wanted to give both sides a chance to provide any further evidence and arguments before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

What happened

Miss A was looking to invest as she had some health issues which made it difficult for her to find employment. She came across an advertisement on a well-known social media site (that I'll call F) promoting online trading investments with a company (that I'll call A). The advertisement appeared to be affiliated with a reputable television channel and endorsed by a celebrity who is known to have links to cryptocurrency. This persuaded Miss A that the investment was genuine.

Miss A registered her interest with A by leaving some personal details. She then received a call back from a representative of A. Unbeknown to Miss A at the time, she was speaking to a fraudster.

The fraudster convinced Miss A to deposit £200 to start trading, and in return she was expecting to make £400 to £500 per day. She paid this by debit card payment on 18 August 2023. Once done, she was expecting a broker to get in touch with her to teach her how to start trading. She had access to an online trading platform, and she could see her deposit in her account. But she soon ran in to difficulties logging in, which she found suspicious. After a few days, she was told her investment had grown to £22,000 and she had to pay £2,000 to access this. Miss A said she didn't have the money to pay this, so she told the fraudster she was no longer interested and asked for her £200 back, however they didn't oblige. So, on 5 September 2023 Miss A reported to Santander that she'd been scammed.

Santander declined to refund Miss A. It said:

- *Miss A's claim doesn't meet the requirement to be reviewed under the Contingent Reimbursement Model (CRM) Code, as she made a card payment, and these aren't covered by the CRM Code.*
- *Miss A authorised the card payment so Santander cannot be held liable for it.*
- *The payment was not unusual for her account, so it wouldn't have flagged with its automated fraud detection systems.*
- *The payment from Santander was not the scam payment as it went to an account in her own name. It was the onward movement of cryptocurrency that was the scam payment, which Santander had no control over. Her complaint should be directed at the merchant.*

- *It had no reasonable grounds to attempt a chargeback claim for Miss A, as she invested through a third party who completed the service.*
- *Miss A didn't complete due diligence before agreeing to invest.*

Miss A was unhappy with this response, as she thinks other victims of the same scam have been refunded by their banks.

Our Investigator looked into Miss A's complaint, but they too did not uphold it. They agreed that the payment was authorised by Miss A, and it was unremarkable in nature compared to her previous account activity. So, they did not think Santander ought to have thought there was any risk attached to the payment. Our Investigator also considered whether Santander ought to have attempted to recover Miss A's funds through the relevant chargeback scheme. But they too thought this would not have been possible, as Miss A paid a legitimate payment processing service. And as Miss A likely would have received the service she paid for, which would likely have been processing the payment to a third party, there was no reasonable prospect of the chargeback succeeding.

Miss A didn't accept our Investigator's outcome. She thought it was unfair she wasn't being refunded on the basis she paid by card.

As no agreement could be reached, this case was passed to me for a decision to be issued.

Through my own investigation, I pointed out to Santander that it appeared to have confused the merchant Miss A paid with another merchant, by a similar name, who offers online payment processing services, including the purchase and movement of cryptocurrency. Whereas the merchant Miss A paid, appears to have been an online learning centre based overseas, offering courses in cryptocurrency trading. This is supported by the MCC code (which is a code used to classify merchants and businesses by the type of goods or services provided) showing as 'Schools and Educational Services (Not elsewhere classified)'. This merchant doesn't appear to be a cryptocurrency exchange platform nor a payment processor.

In response, Santander said it didn't complete a chargeback for Miss A due to the information it was given, as opposed to the merchant the payment went to. In a call on 13 September 2023, Miss A confirmed the transaction was in connection with online trading. And as Miss A completed the investment through a third party, it maintained a chargeback was not available.

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.

I'm very sorry to learn about what happened to Miss A, but I don't think Santander is responsible for her loss. I'll explain why.

It isn't in dispute that Miss A carried out the transaction, albeit she was tricked into doing so. So, under the relevant regulations, namely the Payment Services Regulations 2017 (PSR 2017), the starting position is that Miss A is responsible for the transaction she has authorised.

However I've considered whether Santander should have done more to prevent Miss A from falling victim to a scam, as there are some situations in which a bank should reasonably have taken a closer look at the circumstances surrounding a particular payment. For example, if it was particularly out of character or considered 'high risk'.

But in this case, I don't think there was anything so unusual or so uncharacteristic about this payment that ought to have alerted Santander to the possibility that Miss A might have been at risk of financial harm.

I've also thought about whether Santander could have done more to recover the funds after Miss A reported the scam, as in some circumstances money spent via debit card can be recovered via the bank raising a chargeback dispute.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator – Mastercard in this case – ultimately arbitrates on a dispute if it can't be resolved between the merchant and the cardholder. Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed.

There are very limited options for payments that have gone to any type of investment. Miss A's claim was that she could not withdraw her funds from her trading account with A and that they were operating fraudulently.

Mastercard's scheme does not consider claims about being unable to withdraw funds from trading accounts. And whilst the scheme does provide fraud-related dispute resolution options for victims, specifically around unauthorised transactions, this does not extend to transactions the card holder has authorised as a result of a scam. So, given there would be no reasonable prospect of a chargeback succeeding in these circumstances, I don't think Santander acted unfairly by not pursuing a chargeback for the debit card transaction.

I know this will be disappointing for Miss A, and I'm sorry she was tricked into parting with her money in such a cruel way. But my role is to consider whether Santander can fairly and reasonably be held liable for her loss, taking into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. Having done so, I'm unable to find Santander made any material errors, so it's not liable for her loss.

My provisional decision

My provisional decision is that I do not intend to uphold this complaint.

Santander confirmed it had nothing further to add to my provisional decision. Miss A did not respond.

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 neither party have provided any new comments or evidence for me to consider, my final decision is unchanged from the provisional findings I've set out above.

My final decision

For the reasons I've explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 9 July 2024.

Meghan Gilligan
Ombudsman