

The complaint

Miss P complains that Santander UK Plc didn't do enough to protect her when she fell victim to a job scam.

What happened

Miss P and her ex-partner were looking for work and were contacted by someone on Whatsapp setting out a job opportunity. Miss P has explained she downloaded software and set up an account with a cryptocurrency firm as part of this job. She said that the training was done using this software, which she originally said allowed the scammers to access her device. She says she shared her bank details in order to receive her salary, but that she didn't share her security credentials or any other information.

Miss P complained to Santander when she discovered that payments had been leaving her account and going to the cryptocurrency firm she'd set up an account with. She said she didn't authorise any payments to be taken and only expected to receive funds as a salary. She explained that she'd sent money to her now ex-partner and another family member as part of this scam. And that they'd also lost these funds due to the scam and unauthorised payments also being taken from their accounts.

Santander didn't uphold her complaint. It said Miss P had authorised the card payments and these went to a genuine merchant. And that as she'd sent the money to persons known to her, and it was lost to the scam from their accounts, they needed to raise complaints about the lost funds. Miss P brought her complaint to our service and our investigator partially upheld it. Santander asked for an ombudsman to review the case, so it's been passed to me for a decision.

I issued a provisional decision on this complaint in early July 2024. My provisional findings were as follows:

Authorisation of card payments

Under the Payment Services Regulations 2017, the starting position is that Santander would be held responsible for payments Miss P didn't authorise, but Miss P would be responsible for payments that she did. Miss P has explained that she didn't make any of the card payments that left her account and went direct to the cryptocurrency firm. However she has told us that, as part of the job opportunity, she did create an account with the cryptocurrency firm these payments went to.

Santander has said Miss P did authorise these payments. It's been able to show us that some of the payments required additional authentication which would've required personal security details from Miss P. And that the same device was used for authorised payments as well as those that are reported as unauthorised.

Miss P has said she didn't share any of her banking security credentials, so it's not clear how the authentication was completed if it wasn't by her. While she's told us she downloaded remote access software as part of the scam, these payments

happened over a period of time – 4 days. And this software alone wouldn't enable the scammer to complete the steps needed for 3DS authentication. I also note that Miss P's ex-partner, as part of this same scam, had payments to this same merchant leave their account. But they told their bank that they and Miss P were making these payments.

Miss P also made transfers into and out of her account, dealt with below, after some of the payments to the cryptocurrency firm were made. But she didn't report the cryptocurrency transactions to Santander at this time. If they were unauthorised, considering the values involved, I would've expected these to have been reported shortly after they happened, as Miss P was using her online banking and accessing her account, so should've seen these transactions.

Considering the information provided by Santander and other information we hold on this particular scam, I think it's most likely Miss P did authorise these payments. I haven't been able to establish a point of compromise for her card details and personalised security credentials which would have enabled a third party to make these payments without her knowledge or consent. And while Miss P has told us neither of them authorised these payments, her ex-partner has said that making these payments was part of this scam.

Faster payments

Our investigator applied the Contingent Reimbursement Model ('the code') to the faster payments Miss P sent to her family member and ex-partner. But I don't agree it does apply in this case.

While I accept that the code can be applied to situations where someone has transferred money to a friend or family to then send on to a scammer, this isn't what has happened here. Miss P sent money to a family member and her partner at the time, and they used these funds to purchase cryptocurrency which was then sent to the scammer. The money did not move from their accounts direct to the scammer, it first went to a genuine firm.

Due to the above I don't agree Miss P can benefit from the protection the code offers. So I've then thought about whether Santander ought to have taken any other steps to protect Miss P's account.

Intervention by Santander

Taking into account longstanding regulatory expectations and requirements and what I consider to have been good practice at the time, Santander 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 it, does.

Looking at the general account usage, I consider that Santander should've spoken to Miss P about the fourth transfer she made on 17 April 2023 for £10,000. She'd sent a large sum already that day to her partner at the time, over £10,000, so her account usage had changed considerably. And I think it should've seemed unusual for someone to move so much money in and out of their own account on one day, but to not send it all at once.

Where an intervention didn't happen when we think it should have, we have to weigh up what we think is most likely to have happened. To uphold Miss P's case here, I

would have to persuaded that it's most likely she would've shared full details with Santander in the intervention call about everything that was going on at that time. And so from this, Santander would've been able to determine it was likely she was falling victim to a scam.

Considering the testimony Miss P has provided to us, I can't safely say that Santander would've been able to unravel this scam. I'll explain why.

Looking at the case as a whole, Miss P's testimony and explanation of the scam events aren't supported by the evidence we hold. As above, while she has said she didn't authorise certain payments, the contemporaneous evidence suggests it's most likely she did. And her ex-partner, the person she is making the transfers to, has given a quite different account of what was going on at the time it was happening.

This differing testimony makes it difficult to place weight on Miss P's testimony or be confident she would've honestly presented the scam situation to Santander, when it isn't clear exactly what actually happened or what the true version of events is. We asked Miss P for correspondence between her and the scammers from the time, but she's explained it was only her ex-partner who had this and it's no longer available. But what I have seen of this (from what he provided previously) doesn't support her version of events.

Miss P has told our service she made the transfers to her ex-partner as they both believed they were then moving this money to a new savings account with a better interest rate. I understand these funds had been jointly saved for a mortgage. Had Miss P given that reasoning to Santander, if it questioned her on the £10,000 payment, I can't see it would've had any reason to be concerned about or stop the payment. Or that it would've needed to ask her more questions about this payment or subsequent ones to that same payee. The payee was well-established on the account and the explanation given wouldn't have suggested risk of financial harm from fraud or a scam.

Miss P has however also told us that the new savings account was set up as part of the scam job/investment opportunity. And her testimony aside, it looks like the money was actually moved to her ex-partner to buy more cryptocurrency for the job scam. So I accept that if she'd have detailed this to Santander it likely would've realised this was a scam and explained this to her. But I can't safely say this is what would've happened, as it's not clear if that is what she understood at the time – or, more importantly, if that detail is what she would've shared with Santander. The payment reason she selected was paying friends and family.

I've then thought about the payments Miss P made to the second payee for this scam, her family member, but I don't consider Santander ought to have had any fraud concerns about these. This was another established payee, and the reported payments are of similar amounts to what had been sent to this individual in the months prior to the scam. So none of these payments looked unusual or suspicious for Miss P's account.

As I've determined they're authorised, I've also considered whether the cryptocurrency card payments ought to have concerned Santander. But, considering their value in comparison to the other account activity, I don't consider Santander needed to take any additional steps in relation to these payments. And as these payments went to a genuine cryptocurrency firm, Santander wouldn't have been able to successfully pursue a chargeback for these payments.

Provisional conclusion

I accept Miss P has been the victim of a cruel and complicated scam. But I don't consider Santander does need to refund her any of the amounts she lost.

I think Miss P did authorise the card payments and Santander couldn't have recovered these for her. And I'm not persuaded it would've been able to unravel this scam if it had spoken to her, based on the fact I can't be sure what was going on and what she understood at the time. I can't confidently say that she would've shared information that meant it could've realised this was a job scam and so then shared information which would've prevented her sending further payments.

Santander responded accepting the provisional decision. Miss P asked to speak to our investigator and also arranged for her ex-partner to have a call with our service to give more information about what happened. The case has now been returned 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.

In the latest call with our service, Miss P said she made the payments from 14 to 16 April 2023 and those to her family member, but her ex-partner accessed her account and made all the other payments. Miss P's partner corroborated this story. She's said she doesn't know how her ex-partner got into her phone to make these payments, but has explained you needed to know her code, which she hadn't shared; or use Face ID to access her phone – and this was only set up for her. Our investigator clarified with Miss P the authorised payments were a mix of transfers and card payments, which she acknowledged and again confirmed the dates she made payments.

As above, when Miss P first complained she said all the card payments were unauthorised and she didn't know how the scammer got these details. But she has now acknowledged making some of these payments. And with the dates provided, she's now saying she didn't make payments that she previously said she did authorise.

While I have considered in detail the further comments Miss P has provided, including the call we had with her ex-partner, this doesn't persuade me to change my findings from my provisional decision in regard to authorisation.

The largest transfers were made on 17 April 2024, when Miss P now says her ex-partner was accessing her account and making payments without her knowledge or authorisation. But on her signed complaint form, Miss P says that she transferred £20,000 to her ex-partner – and this figure is roughly what was sent on 17 April 2023. And without taking into account payments Miss P now says she didn't make, you can't reach an amount near what her complaint form says she sent. So her new testimony is contradictory to what she originally told us and Santander.

Also, the payments Miss P says she authorised to her family member were made after she now says her ex-partner had been accessing her account. She's explained she didn't notice the payments he'd made at that time. This is surprising considering the amounts, but I accept she may not have looked back at her statements when she made the payments. However, her statement also indicates she funded one of the genuine payments with a transfer in from the same savings account she says her ex-partner had been accessing without her consent. I can't understand how Miss P wouldn't have noticed this account had over £20,000 less in it than she expected. She'd have seen the available balance when she

made the transfer. But she didn't report anything at this time.

I don't consider I can fairly hold Santander liable for any payments reported by Miss P as unauthorised, considering her highly inconsistent recollections and her changing which payments she did and didn't authorise. Santander has shown how all the payments were authenticated and that whoever made the payments knew Miss P's full security credentials. And I'm still of the opinion that it's most likely she did consent to all the payments in dispute, either by making these payments herself, or by giving someone else the authority to make them on her behalf. So I'm still concluding that Miss P should be held liable for these.

Moving on to an intervention by Santander, I also haven't changed my findings in relation to this. I still think it ought to have intervened on the £10,000 payment made on 17 April 2023. But I can't safely say an intervention by Santander would've prevented this scam going ahead. As above, I would need to consider it more likely than not that Miss P either would've told Santander something for it to realise she was being scammed. Or it would've asked her questions that led her to realise this. And considering it's even less clear now what was actually happening in this scam and what Miss P knew/didn't know, it's very difficult to safely say what she would've told Santander.

I accept that if Santander had contacted Miss P in relation to payments that she wasn't making herself, it likely would've been able to prevent these. But as set out, Miss P originally told us and the business she made the larger transfers. I think this is the most likely version of events, not the testimony provided now. So the conversation would've gone along the lines of what I previously detailed in my provisional decision and wouldn't have prevented the payments.

Miss P has maintained her testimony that she authorised the payments to her family member. And didn't provide any additional comments on these. So I don't see any reason to change my findings on these payments.

I recognise Miss P was the victim of a scam and it's likely she didn't understand the full extent of what was going on due to her ex-partner's involvement. However, I can't fairly hold Santander responsible for her losses in this case. So for the reasons set out above, including the findings in my provisional decision, I don't uphold this complaint.

My final decision

For the reasons above, I don't uphold Miss P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 26 August 2024.

Amy Osborne
Ombudsman