

The complaint

Mrs K complains about Santander UK Plc.

She says that Santander didn't do enough to protect her when she was the victim of a scam and would like it to refund her the money she has lost.

What happened

Mrs K had been looking for remote job opportunities online when she received a message offering her work promoting an app.

Not finding any negative information online about the company, she was persuaded that it was a genuine opportunity. It was explained to her that she would need to purchase 'tasks' to complete, which would be done via cryptocurrency. She would then be paid commission.

Mrs K initially made two payments directly to OC, a crypto exchange, and then opened an account with W, an electronic money institute (EMI) and moved funds from her account with Santander to W, before making payments from W to a crypto exchange, and then more payments to OC from Santander.

However, after making her payments, Mrs K wasn't able to access her supposed commission, and after speaking with her partner realised she had been scammed.

By this point, she had made the following payments.

Payment	Date	Payment type and payee	Amount
1	01/09/2023	Debit card to OC (crypto)	£10
2	01/09/2023	Debit card to OC (crypto)	£136
3	02/09/2023	Faster payment to W (own account)	£1,100
4	02/09/2023	Faster payment to W (own account)	£1,100
5	02/09/2023	Faster payment to W (own account)	£2,500
6	02/09/2023	Faster payment to W (own account)	£2,500
7	03/09/2023	Faster payment to W (own account)	£6,000 (Returned)
8	03/09/2023	Faster payment to W (own account)	£200 (Returned)
9	03/09/2023	Debit card to OC (crypto)	£1,000
10	03/09/2023	Debit card to OC (crypto)	£960
11	05/09/2023	Debit card to OC (crypto)	£800
12	06/09/2023	Debit card to OC (crypto)	£2,160
13	06/09/2023	Debit card to OC (crypto)	£1,000
14	13/09/2023	Debit card to OC (crypto)	£250
15	14/09/2023	Debit card to OC (crypto)	£250
16	15/09/2023	Debit card to OC (crypto)	£1,160
17	15/09/2023	Debit card to OC (crypto)	£1,500
		Total loss	£16,426

Mrs K complained to Santander about what had happened, but it didn't uphold her complaint. She then brought her complaint to this Service, and our Investigator looked into things – they thought that her complaint should be upheld in part.

They explained that Santander should have intervened in the payments earlier than it did – and the intervention that took place was not as good as it should have been.

They also explained that while Santander should refund Mrs K some of the money she had lost that Mrs K was not as careful as she should have been before parting with her money, and Mrs K and Santander should share responsibility for the loss from the point that Santander should have intervened.

Mrs K accepted this outcome, but Santander did not.

In summary, it said Mrs K was making payments to an account in her own name, and that there was not enough evidence to suggest that Mrs K was at risk of financial harm. It also made reference to the Supreme Court Judgement in the case of Philipp vs Barclays Bank Plc UK [2023] UKSC 25 which confirmed that where a bank receives instruction from a customer which is clear and leaves no room for interpretation and the customer's account is in credit, the bank's primary duty is to execute the payment instruction. As they felt they received a clear instruction from Mrs K to send funds, they did not agree that there was any room for interpretation from them. In addition, they reiterated Mrs K's loss did not take place from her Santander account but were moved to an account in her own name and then lost, so they should not be responsible for reimbursing her.

As no agreement was reached, the complaint has been passed to me to make 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.

Having done so, I've decided to partially uphold this complaint, for broadly the same reasons as our Investigator. I'll explain why.

It isn't in dispute here that Mrs K has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised – which I am satisfied that Mrs K did here.

And while Mrs K didn't intend the money to go to scammers, the starting position in law is that Santander was obliged to follow her instruction and process the payments. Because of this, she is not automatically entitled to a refund.

However, the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

So, I've also thought about whether Santander did enough to try to keep Mrs K's account safe. In reaching my decision, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC* [2023] UKSC 25.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- The express terms of the current account contract may modify or alter that position. For example, in *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.

In this case, Santander's terms and conditions gave it rights (but not obligations) to:

1. Refuse any payment if the payment may be connected to a scam, fraud or any other criminal activity.
2. Delay payments while fraud prevention checks take place and might need to contact the account holder if Santander suspects that a payment is fraudulent.

So, the starting position at law was that:

- Santander was under an implied duty at law to make payments promptly.
- It had a contractual right not to make payments where it suspected fraud.
- It had a contractual right to delay payments to make enquiries where it suspected fraud.
- It could therefore refuse payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things.

Whilst the current account terms did not oblige Santander to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Santander from making fraud checks before making a payment. And 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.

Looking at the payments Mrs K made, I don't think that Santander needed to get involved with what Mrs K was doing until she made her seventh payment – up until this point, the payments weren't significantly unusual or suspicious, enough for Santander to have had concerns that Mrs K may have been at risk of financial harm – the payments made to the crypto exchange were very small, and the other transactions were going to an account in

Mrs K's name and weren't for an excessive amount.

However, when Mrs K made the payment of £6,000, I think that Santander should have had concerns about what was going on – the amounts Mrs K was transferring was steadily increasing, and although they were going to an account in her own name, by the time Mrs K was making these payments, Santander should have had knowledge about the common use of multi-account scams – and although I wouldn't have expected Santander to have intervened when Mrs K was making the earlier payments to the crypto exchange, Santander would have known that Mrs K had been making payments to crypto and had now started making payments to an EMI, which can be a sign of a multi-account scam.

Santander did intervene when Mrs K was making payment 12 – and it spoke with her on the phone about what she was doing. But although it was aware that Mrs K was making payments to a crypto exchange, it didn't go further than asking her if she was the one making the payment. I think that Santander should have gone further. I understand that Mrs K was told by the scammer to say that the money was for a friend or for shopping – but this story was flimsy, and I don't think it would have stood up to scrutiny.

Given the prevalence of crypto scams at the time Mrs K made her payments, Santander should have asked probing and appropriate questions about what she was doing and provided her with effective and tailored warnings covering a range of different types of crypto scams, including task-based job scams (which were becoming more prevalent at this time). And I don't think that Mrs K would have ignored such a warning from her trusted bank.

I also don't agree with Santander about the loss not occurring from Mrs K's account with Santander, so it should not be liable for the loss. Santander should be aware that when a scam takes place, the funds are moved on very quickly from one place to the next – and as I've said above, I think it could have prevented this.

Finally, I do need to consider if Mrs K should bear some responsibility for her loss – and having considered this carefully, I think that this should be shared between Mrs K and Santander equally from the point I think it should have intervened.

Mrs K has already accepted what our Investigator has said on the matter, so I will be brief – but in summary, I don't think that Mrs K was as careful as she should have been before parting with her money. She accepted a job offer given to her via a messaging service, with no training or enrolment process and received no contract. I also think that the promises made were not realistic – and paying money to earn money is not how a job would usually work.

Putting things right

Santander UK Plc should refund Mrs K 50% of the payments made from the point I think it should have intervened, minus the funds which were returned. I should also pay Mrs K 8% simple interest on this amount from the date of the payment until settlement.

My final decision

I uphold this complaint in part, Santander UK Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 6 March 2025.

Claire Pugh

Ombudsman