

## **The complaint**

Ms S complains that Santander UK Plc won't refund over £7,000 she lost to a scam.

Ms S is represented in this complaint by a solicitor. For simplicity I will refer to Ms S throughout this decision, even when referencing what her representatives has said on her behalf.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat everything again here. In brief, Ms S fell victim to a fake job scam after she was contacted on a messaging app – I will call the scammer 'R'. R told Ms S that she would be paid for completing a number of tasks. Initially, Ms S was able to complete these tasks and made some small profits which she could withdraw into the cryptocurrency wallet she'd been told to set up. But a few days into the scam Ms S was told she would have to pay in funds to the job platform first using cryptocurrency, in order to unlock more tasks.

In total, over six days, Ms S made card payments totalling over £7,000 towards the scam, from her Santander account to an account she'd been told to open with a cryptocurrency exchange, from where her funds were moved on to the scammers. Ms S realised she had been scammed when R continued to pressure her to pay more into the scam without allowing her to withdraw any profits.

Ms S contacted Santander via her solicitor to let it know what had happened. But Santander did not consider that it had any liability for her loss. It said it had intervened appropriately in the payments she had made. Ms S was unhappy with this response, so she referred her complaint to our service.

Our investigator upheld the complaint in part. They thought that Santander ought to have questioned Ms S in more detail about the final payment she made to the scam, which was for £4,500. The investigator thought that, had that happened, the scam would likely have been stopped. So, the investigator said that Santander should refund the money Ms S had lost from this payment, less a deduction of 50% in recognition of Ms S' own contributory negligence.

Santander disagreed, so the matter has been escalated to me to determine.

## **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 satisfied Ms S authorised the payments that are in dispute, so as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Ms S is responsible for them. That remains the case even though Ms S was the unfortunate victim of a scam.

Because of this, Ms S is not automatically entitled to a refund. But 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.

Taking the above into consideration, I need to decide whether Santander acted fairly and reasonably in its dealings with Ms S, or whether it should have done more than it did.

The initial payments Ms S made to the scam were for fairly small amounts, and in the context of Ms S' usual account usage I don't consider that they were high enough to have merited any direct intervention from Santander. But the final payment Ms S made to the scam was for £4,500, a much larger amount than Ms S had ever previously spent on her account. And given the pattern that had emerged of increasing payments to a new payee, I think it was appropriate for Santander to intervene at this stage to establish what this payment was for and to ensure Ms S was not at risk of financial harm.

And Santander did do so, Ms S was required to discuss this payment with Santander before it could be processed. However, I do not consider that the call handlers Ms S spoke to went far enough to probe the circumstances of this payment. During the call Ms S confirmed that the payment was going to a payee that I think it should have been fairly clear was associated with cryptocurrency, and Ms S said she was exchanging currency. But Santander did not ask any more exploratory questions regarding what currency she was purchasing, why she had made multiple payments to this same payee, or why a cryptocurrency platform was involved. One of the call handlers asked Ms S if she was exchanging currency for a holiday, and I acknowledge that she did say yes, but I think it should have been fairly clear to Santander that this answer did not really make sense given where the funds were going.

And with what it knew about scams, and how common it is for scammers to coach their victims regarding what to say about payments, I think it would have been proportionate for Santander to ask Ms S some more detailed questions about exactly what she was doing. I appreciate that Ms S was not entirely honest about what the payment was for, but she doesn't appear to have been given any particularly detailed back story, so I think it is more likely than not that she would have told Santander what she was making the payments for if it had challenged her on what she had told it initially and had warned her that anyone telling her to lie was likely to be a scammer – a common feature of many types of scams.

So, Santander would have likely discovered that she had been contacted via a messaging app by a company offering to pay her for completing tasks, but that Ms S had been told that she would first have to pay money into the scheme using cryptocurrency. And Santander would have been able to clearly identify the significant risk that these payments were part of a scam and could have made that clear to Ms S. I consider it likely that Ms S would have acted on any such warning.

As a result, I believe Santander should refund the final payment Ms S lost to the scam.

Santander has argued that Ms S' money wasn't lost as a result of it leaving the current account. Instead, it says the money was lost only when moved on from the cryptocurrency wallet. Whilst that might be the case, the loss was still reasonably foreseeable to the bank. Santander ought to be aware of multi-stage fraud, including where cryptocurrency wallets are used. And the link of causation is still present, meaning the use of the cryptocurrency wallet doesn't lead to Santander bearing no responsibility. As the loss should have been prevented, it's fair and reasonable Santander compensate Ms S for it.

I've gone on to consider whether Ms S should reasonably bear some responsibility for the losses as a result of any contributory negligence in her actions and if it is therefore reasonable for me to make a reduction in the award based on this. In doing so, I've considered whether Ms S has acted as a reasonable person would to protect herself against the loss she suffered. And, having thought carefully about this, I don't think she did. I think she ought reasonably to have had concerns about the legitimacy of the job offered given, amongst other things, the requirement to send funds to acquire the profits she'd supposedly earned. I also think receiving an unsolicited job offer, via a mobile messaging service app, should've been seen as unusual to Ms S, and so should have led to her looking more deeply into this job she was apparently being offered. Because of this, I think it would be fair and reasonable to make a 50% reduction in the award based on contributory negligence in the circumstances of this complaint.

I've also thought about whether Santander could have done more to attempt to recover the payments after Ms S reported the fraud. But I'm satisfied that there was nothing Santander could have done to recover the funds Ms S lost here, given that they were used to purchase cryptocurrency which was subsequently passed on to the scammers.

### **Putting things right**

To resolve this complaint Santander UK Plc should:

- Refund the final payment Ms S made to the scam, with a deduction of 50% in recognition of Ms S' own contributory negligence towards her loss.
- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

### **My final decision**

I uphold this complaint in part. Santander UK Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 14 November 2024.

Sophie Mitchell  
**Ombudsman**