DRN-5075493

The complaint

Mrs M is unhappy that Santander UK Plc didn't refund payments she sent as part of a scam.

Mrs M has made her complaint through professional representatives, but for ease I've referred only to Mrs M in this decision.

What happened

The background to the complaint is well known to both parties so I won't repeat it in detail here. But, in summary, Mrs M fell victim to an investment scam in November 2021. She'd seen her friend promoting a cryptocurrency investment opportunity on social media. Mrs M contacted that friend, as she wanted to get involved, and was connected to a 'broker' (the scammer).

The scammer then directed Mrs M to set up an account with what she thought was a legitimate investment platform, and another account at a cryptocurrency exchange. She was told to exchange funds into cryptocurrency, and then send them on to the fake investment platform. Mrs M invested an initial amount from an account at another bank, and watched the balance on the fake platform increase significantly within in a few hours.

Encouraged by what she'd seen, with her profits rising quickly into the tens of thousands, Mrs M wanted to withdraw some – but was told there were fees to pay. She then sent a total of £5,924.47 from her Santander account to the cryptocurrency exchange, and from there onto the fake investment platform, in three transactions over two days:

Date	Type of transaction	Amount
8 November 2021	Debit card payment to cryptocurrency	£2,413.69
8 November 2021	Debit card payment to cryptocurrency	£930.34
9 November 2021	Debit card payment to cryptocurrency	£2,580.44

Each of the above transactions were supposedly for fees or taxes. But after sending the third payment, and having been promised a couple of times that would be the last thing to pay before withdrawal, she was sent another request for additional funds. Mrs M no longer had any more money to send – and that's when she says she realised she'd been scammed, and her friend's social media account had been hacked. She reported things to Santander, but the bank said it couldn't help as she had authorised the payments.

In 2024 Mrs M raised a complaint that Santander ought to have questioned her over the payments before allowing them. She argued they were significantly out of character for the account and warranted an intervention – had that happened the loss would have been prevented. Santander's response said the transactions weren't covered under the Contingent Reimbursement Model (CRM), which is a voluntary code where signatory banks refund fraudulent transactions in certain scenarios. So it didn't think it was liable.

Unhappy with the response, she referred the complaint to our service. One of our investigators reviewed everything and thought the complaint should be upheld. In his view, There were enough concerning factors by the third payment that Santander shouldn't have allowed it before making enquiries. The investigator noted the transactions were significantly higher than the previous usual spend on the account, were going to cryptocurrency (a higher risk destination), had taken the account into the overdraft (rarely seen), and appeared in part to have been funded by a cash advance using her credit card. He believed a proportionate intervention would have revealed what was happening. But the investigator also felt Mrs M should share some responsibility in what happened – as she'd also missed clear warning signs things weren't right. He therefore recommended 50/50 liability split for the final transaction, with Santander refunding half plus interest.

Mr M accepted the 50% reduction, but thought it should be applied to a refund of all three transactions – as she argued the first transaction was so out of character, that's the point Santander ought to have intervened. Santander didn't accept it had done anything wrong, and said it was yet to see evidence Mrs M had been scammed. The bank argued that customers can make larger payments on an account without it being fraud related. It also expressed concern that our service was holding it to a higher standard of care than the cryptocurrency exchange. Ultimately Santander thought that even if it had asked questions, given Mrs M was acting on the recommendations of a close friend, any intervention was unlikely to have broken the spell and stopped the payments.

The investigator's view remained the same. So the case was passed to me for a final decision on the matter.

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 reached the same outcome as the investigator – for the same reasons. I've set out my rationale below.

In broad terms, the starting position in law is that a bank 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 the Payment Services Regulations (PSR's). Mrs M 'authorised' the transactions in question (she made them), albeit under the false belief they were for a legitimate investment opportunity. So Santander was under an obligation to process the payments – but that isn't the end of the story, as far as the bank's responsibility goes.

While that's the starting position, I've also taken into account the regulator's rules and guidance; relevant codes of practice, along with what I consider to have been good industry practice at the time. That means I consider Santander should fairly and reasonably have been on the lookout for the possibility of Authorised Push Payment fraud at the time, and intervened if there were clear indications its customer might be at risk.

Santander has a difficult balance to strike in how it configures its systems to detect unusual activity indicative of a higher risk of fraud. There are many millions of payments made each day and it would not be possible or reasonable to expect Santander (or any business) to check each one. In situations where Santander does decide to (or should) carry out further checks, I would expect that intervention to be proportionate to the circumstances of the payment.

None of the disputed transactions triggered Santander's fraud detection system for further enquiries. So, the first question for me to decide is whether the disputed transactions ought to have looked concerning enough to have prompted fraud checks. Then, if I deem further checks were necessary, I'll consider whether a proportionate intervention would have likely prevented the loss.

Looking at the account history in the period running up to the disputed transactions, the activity on 8 and 9 November 2021 represented a marked change in use. The highest spend in the year prior to the scam payments was a monthly direct debit for £640, and pretty much all the other transactions were much lower (under £100). But almost £8,200 comes in and quickly leaves the account over 24 hours on the dates in question. Santander is correct that customers can make one off larger payments and that won't necessarily be indicative of fraud, so I don't think it ought to have intervened on the first transfer – it was larger, and to cryptocurrency, but not so concerningly large that it represented a fraud risk. Daily or rolling limits on cryptocurrency spending hadn't yet been brought in by Santander. The second transaction was for a lower amount too, so a fraud pattern hadn't obviously emerged at that point – though it did take the account into its overdraft, which was a rare occurrence.

But by the time the third payment drained the account I consider there was enough going on that Santander ought to have been concerned Mrs M might be at risk of financial harm, and intervened before allowing it. That transfer brought the total sent to cryptocurrency (a riskier destination) in short space of time to almost £6,000 – on top of the other risk factors that I've described. Once eyes were on the account, Santander would have spotted that the cryptocurrency spend has been in part funded by a cash advance from a credit card, adding to concerns about the activity. So the intervention should have taken the form of some probing questions by the bank – to understand why Mrs M was sending so much money to cryptocurrency, over multiple transactions, in a short space of time, and borrowing to fund that spend.

I appreciate what Santander has said about the original recommendation for the investment coming from a trusted friend, meaning the scammer's spell would have been more difficult to break. But I think proportionate questioning would have revealed that the circumstances were highly indicative of a scam. There's no evidence of coaching in the chats with the scammer, and Mrs M isn't provided with a cover story or encouraged to lie to her bank. She was also expressing doubts about the legitimacy of the request for more funds by the time the third payment was made. So I think Mrs M would likely have been honest about what she was doing, and receptive to warnings. From that conversation Santander would have learned the transaction was to pay 'taxes', having already sent fees totalling many times more the amount originally invested. It would also have discovered there was a third party broker involved, the opportunity was found via social media, as well as the unrealistic returns seen in a short time – all clear hallmarks of a cryptocurrency investment scam.

Santander could have suggested Mrs M spoke to the friend over the phone or in person, rather than on social media – as accounts being hacked, to induce someone to invest, is another common feature of these scams. I'm confident that questioning, and the appropriate warning, would have revealed what was happening – and meant Mrs M didn't transfer any more money.

Santander has said it hasn't seen any evidence to confirm Mrs M was scammed – but I'm satisfied by the information provided that this money was lost to fraud. The bank had its opportunity to ask for that when reviewing the fraud claim and complaint. It is also aware of our approach to these complaints, and the payments not being caught by the CRM code isn't a reason to not investigate claims fully. Santander also expressed concern at being held to a higher standard than the cryptocurrency exchange – but our service isn't holding the cryptocurrency provider to any standard. We don't have a complaint about that company (though I understand Mrs M did try to pursue one), and cryptocurrency services aren't a regulated activity.

I've thought about whether Mrs M should bear some responsibility for the loss, having regard for the principle of contributory negligence. In doing so, I recognise the huge impact the fraud will have had on her, and accept that she (along with the bank) are a victim of the scammer's actions. But I think there were warning signs that were missed, and when considered together those ought to have been prompting concern as to whether the investment was legitimate. Mrs M was also expressing doubts in the chats with the scammer and her 'friend', but still went ahead. Some of the red flags included the unrealistic returns seen in a short amount of time, the repeated requests for more fees/taxes after having been assured there wouldn't have been any more, and not having seen those charges mentioned in the posts by her friend. Being encouraged to borrow money to release the investment also ought to have been a warning sign, as no legitimate broker would encourage that.

Overall, those factors mean I consider Mrs M didn't act reasonably when ignoring the warning signs, and that she also had an opportunity to prevent the loss on the final transaction. So both parties should equally share liability for that amount. For the time Mrs M was deprived of the use of those funds, Santander should apply 8% simple interest to the potion of the loss (50% of the final transaction) it is responsible for.

I haven't found there was more Santander could have done when attempting to recover the lost funds. The transfers were sent to an account with a cryptocurrency exchange in Mrs M's own name, and the funds (once converted) were sent on to the scammer from there. So there wouldn't have been anything left to recover, and Mrs M also had control over that account – so she could have recovered anything remaining herself.

I've also thought about whether there were any service issues that would warrant a compensation award. But the claim was considered reasonably promptly, as was the complaint (though I appreciate Mrs M wasn't happy with the bank's answers). I wouldn't compensate Mrs M for having to bring things to our service to challenge the outcome received either – we're free to use, and she's been assisted by representatives in the matter. Ultimately the majority of the distress experienced was caused by the fraud itself. So I haven't found there's any additional impact, incurred through the fault of Santander, to consider (on top of what has already been recognised above).

Putting things right

Santander should refund 50% of the third payment (of £2,580.44), adding 8% yearly simple interest to that amount, calculated from the date of loss to the date of settlement.

If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is I uphold Mrs M's complaint against Santander UK Plc, and direct it to pay redress in line with what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 31 January 2025.

Ryan Miles
Ombudsman