

The complaint

Mrs B is unhappy that Santander UK Plc haven't refunded money she lost as a result of a scam.

Mrs B is being represented by a claims management company but for ease of reading I'll only refer to Mrs B in the decision.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In later 2021 Mrs B was introduced to a company via a social community programme. The company was promoted to her as an ethical investment opportunity, so she decided to conduct some research on social media. After watching some videos and being added to a messaging group with other investors, Mrs B decided to make the following payments to a crypto exchange account in her name before moving the money to the company.

	Date	Merchant	Method	Amount
1	6 November 2021	Crypto Exchange	Faster Payment	£50
2	6 November 2021	Crypto Exchange	Declined Faster Payment	£7,950
3	6 November 2021	Crypto Exchange	Faster Payment	£7,950
			Total Loss	£8,000

After becoming aware of other investors being unable to withdraw their funds, Mrs B realised she had been scammed. In 2024 Mrs B decided to make a claim to Santander for her money to be returned. Santander considered the claim but said it hadn't done anything wrong so it wouldn't be returning Mrs B's money. Unhappy with that response, Mrs B brought her complaint to the Financial Ombudsman.

Our Investigator felt the complaint should be upheld in part. She said that even though Santander no longer had a copy of the call recording – dated 06 November 2021 – it reasonably stopped the payment Mrs B was attempting to make that day. The investigator said that she was satisfied it was more likely than not that Santander didn't ask Mrs B enough probing questions about her reasons for making the payment and that if it had the scam would've been uncovered.

Santander disagreed and asked for an Ombudsman's review. In summary it said it shouldn't be expected to interrogate its customers, and it can only go as far as provide informative warnings – which is what it did here when Mrs B incorrectly selected a payment reason of 'transfer to own account'. Santander said its primary duty under *Philipp v Barclays Bank plc* is to make the payment, which takes precedent over best practice guides. It added that Mrs B could just as easily raise a claim against the crypto exchange to try and recover her

money rather than just against Santander. And just because it no longer has a copy of the call recording doesn't mean the complaint should be upheld. Santander said that it's equally likely Mrs B wouldn't have been honest in her responses to its questions.

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 agree with our Investigator that this complaint should be upheld in part and for largely the same reasons.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

Where the evidence is incomplete, inconclusive, or contradictory, I have to make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

There's no dispute that Mrs B made and authorised the payments. Mrs B knew who she was paying, and the reason why. At the stage she was making these payments, she believed she was transferring funds to her cryptocurrency account to then use to trade online. I don't dispute Mrs B was scammed and she wasn't making payments for the reason she thought she was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

And (as Santander has referenced) the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions – as Santander did in this case.

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.

Santander's terms and conditions in place at the time for Mrs B's account said at 6.6:

"We can refuse any Payment Instruction, if:

(e) we reasonably suspect it relates to fraud or any other criminal act;”

So, in accordance with Santander’s own terms and conditions it could therefore refuse payments, or make enquiries, where it suspected fraud. 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’m satisfied that, considering 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 APP fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Santander, do and as Santander did in this case.

The detailed reasoning for this has been set out in substantial detail in previous decisions to Santander, so I don’t intend to repeat it all here.

But, overall, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.
- been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

In this case, I need to consider whether Santander acted fairly and reasonably in its dealings with Mrs B when she made the transfers, or whether it could and should have done more before processing them.

Did Santander act fairly and reasonably in Mrs B’s case?

Santander has said that it initially declined the first attempt Mrs B made to transfer £7,950. It says a call then took place with Mrs B, on 06 November 2021, which it says may have lasted for about ten minutes. Given the payment size compared to Mrs B’s previous account activity and the fact this payment was going to a high-risk crypto exchange, I think Santander reasonably stopped that payment. It does mean its arguments regarding the recent court case of Phillips v Barclays are somewhat contradictory to its actions in this complaint. But that aside, I need to decide what most likely happened during that call and whether Santander asked sufficiently probing questions of Mrs B to make sure it could be satisfied she wasn’t likely the victim of a scam.

Typically, in such circumstances I would assess the intervention to decide if Santander asked a proportionate level of questions to understand the basic context of the payment. Unfortunately, there is no call recording or transcript available in this case. This means I need to reach my conclusion based on the balance of probabilities – in other words, based on what is most likely given the available evidence and the wider circumstances.

In summary Santander says that if Mrs B had been honest about why she was making the payment it would've provided an investment warning which would've warned her about receiving cold calls and to check the companies details she was investing with on the Financial Conduct Authority's (FCA) website. So, it said that because Mrs B had previously selected a payment reason of 'transfer to own account' she was likely trying to send the money without detection and thought of any checks by the bank as a barrier to her opportunity to invest.

I've thought carefully about Santander's points here. Having done so, I don't think – on balance – sufficient questions were asked of Mrs B during that call. When speaking to Mrs B, I'd expect Santander to ask why she was making the payment to a crypto exchange. I can see that Mrs B had previously said she was sending money to her own account. In the circumstances here that doesn't persuade me that Mrs B was willing to lie to Santander. The account at the crypto exchange was in her name – so I don't think she acted unreasonably by selecting that reason or that she was more likely than not trying to select a reason so that the bank wouldn't know she was investing. I've not seen any persuasive evidence that Mrs B was being coached here or had a distrust of Santander's questioning. It's just as likely she may not have taken as much care when selecting the payment reason. But that doesn't automatically mean she was willing to lie to any further questions and ignore any warnings Santander would've provided.

So, it follows that if Santander had asked Mrs B why she was making the payment to the crypto exchange, I'm satisfied she would've said she was buying crypto. At that point, Santander should've asked her if she was investing by herself or if she was sending the money to a third-party company. I think Mrs B would've told Santander she wasn't investing alone which would've opened up further questioning into the name of the company she was involved with and at that point the scam would've been uncovered. That's because there was a warning on the FCA's website from 23 March 2021 about the company Mrs B was investing with at the time of the payments. So, once Santander was aware of the name of the company it would've been able to complete a quick search on the FCA scam database and found the warning. Once it had found that warning it would've been able to provide a full warning to Mrs B about the information it had found. She could also have been referred to the FCA's website herself. So, I'm satisfied that probing questions would've likely uncovered this scam.

Santander argues it was not the point of loss and Mrs B first moved the money into another account in her own name at the crypto exchange. However, just because a payment is to an account in the customer's own name that doesn't mean it bears no risk, and I would still expect Santander to identify payments that indicate potential fraud, even if those payments were made to another account belonging to their customer. Santander would've been reasonably aware of the increased risk of payments to crypto at the time of the payments. And I would expect Santander to have an awareness of how these scams operate and be aware of what it should be looking out for to help protect its customers. So, I do think it is reasonable that Santander bear some of the responsibility for what has happened here, even though the money was subsequently forwarded to the scammer from the crypto exchange.

I've also considered that the payments were made to a regulated crypto exchange, and Mrs B might potentially have a claim against it in respect of its actions, as Santander argues

(although the exchange is not a party to this complaint and so I make no finding about its role here). Whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against multiple financial businesses about connected circumstances, Mrs B has only complained about Santander. DISP does not empower me to instruct her to make or refer a complaint about another business and I am required to consider the complaint in front of me.

Should Mrs B bear some responsibility for the overall loss?

I've considered carefully whether Mrs B should hold some responsibility for her loss by way of contributory negligence. I have limited evidence from the time of the scam showing the contact between the scammers and Mrs B. But on balance, I think Mrs B should be held responsible in part. There are two key reasons for this. She was willing to invest based on a recommendation from someone she knew in a social community without attempting to verify the information that person had disclosed. And Mrs B carried out minimal checks on the investment opportunity via social media. Whilst she may have researched the company on social media and was added to messaging groups with other people, more crucially and carrying more weight, an FCA warning was published about the scam company on 23 March 2021.

Given the amount she was investing, I think Mrs B ought reasonably to have done more to reassure herself that the opportunity was genuine.

Overall, I'm not satisfied that it was reasonable for Mrs B to proceed without doing more to verify all the information she was given.

I'm therefore instructing Santander to refund only 50% of £7,950

Did Santander do what it should to try to recover Mrs B's money?

In this case, Mrs B sent the money to her own account at the crypto exchange and from there onto the scammer. So, there was no prospect of Santander being able to recover the funds.

My final decision

My final decision is that I uphold this complaint in part. Santander UK PLC should do the following;

- Refund 50% of £7,950; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of payment 3 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 B how much it has taken off. It should also give Mrs B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 4 June 2025.

Mark Dobson
Ombudsman

