

The complaint

Mrs R is complaining about Santander UK Plc because it declined to refund money she lost as a result of fraud.

What happened

Sadly, Mrs R fell victim to a cruel investment scam. After deciding she wanted to invest in cryptocurrency, she found the scam company online. After providing appropriate identification, she was set up with an account on a fake platform. Mrs R used her Santander account to make the following payments to the scam in April 2024:

No.	Date	Amount £
1	2 April	3,000
2	3 April	3,000
3	4 April	1,500
4	4 April	3,000
5	6 April	2,000
6	9 April	4,500
7	9 April	3,338
8	12 April	5,000
9	15 April	2,500
10	15 April	2,500
11	15 April	2,500

The payments went to the scammer via an account with a legitimate third-party payment processor. Mrs R has said she received a return of £216.36 on 18 April, but I understand the rest of the money was lost to the scam.

Our investigator recommend the complaint be upheld. He felt Santander should have done more to protect Mrs R, particularly after it rejected a previous attempted payment to the scam on 28 March. But he also felt Mrs R should bear some responsibility for her loss and recommended Santander pay compensation based on a 50% refund of each payments.

Santander didn't accept the investigator's assessment. It essentially argues that as the payments went through an account with a third party, it should be held liable for any loss after money was transferred to the scammers. It also says that it asked Mrs R to confirm the purpose of each payment in the app and she consistently answered incorrectly.

Mrs R also didn't accept the investigator's assessment. In summary, she says she believed she was making a genuine investment and was reluctant to discuss what she was doing with Santander as she felt she was being *'interrogated'*. But she believes her account should have been blocked after her conversation with its agent on 28 March and that this would have prevented her losses. So she doesn't accept that she should bear any responsibility.

The complaint has now been referred to me for review.

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 overall conclusions as the investigator. In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice, and, where appropriate, I must also take into account what I consider to have been good industry practice at the time. Both parties have made extensive submissions on this complaint, but I haven't necessarily commented on every single point raised. I've instead concentrated on the issues I believe are central to the outcome of the complaint. This is consistent with our established role as an informal alternative to the courts.

There's no dispute that Mrs R authorised these payments. In broad terms, the starting position at law is that a bank is expected to process payments a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of their account. In this context, '*authorised*' essentially means the customer gave the business an instruction to make a payment from their account. In other words, they knew that money was leaving their account, irrespective of where that money actually went.

In its response to the investigator's assessment, Santander referred to the Supreme Court ruling in the case of *Philipp v Barclays Bank UK PLC*, which essentially said that subject to some limited exceptions banks have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the court considered the nature and extent of the contractual duties owed by banks to their customers 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, it 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.
- At paragraph 114 of the judgment the court noted that express terms of the current account contract may modify or alter that position. 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 legal duty to do so.

So I'm satisfied the judgement doesn't prevent a bank from delaying or refusing a payment, or otherwise intervening in the payment process, in an attempt to protect its customers' accounts. And the fraud measures Santander has in place indicates that it doesn't dispute this interpretation.

In considering this case, I also need to consider all relevant law, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. Taking all of these things into account, I consider it fair and reasonable that Santander should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had systems in place to look out for unusual transactions or other signs that

might indicate that its customers were at risk of fraud. This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;

- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment;
- have been mindful of – among other things – common scam scenarios, how fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

Taking these points into account, I need to decide whether Santander acted fairly and reasonably in its dealings with Mrs R.

Should Santander have recognised that Mrs R was at risk of financial harm from fraud?

I must take into account that many similar payment instructions it receives will be entirely legitimate. But on the other hand, Santander knew this payment was going to a third party that dealt with cryptocurrency. Losses to cryptocurrency fraud reached record levels in 2022 and, by the end of that year, many high street banks had placed restrictions or additional friction on cryptocurrency purchases owing to the elevated fraud risk. So, by the time these payments took place, it should have recognised that payments to cryptocurrency carried a higher risk of being associated with fraud.

Having considered what Santander knew at the time of payment 1, I think it should have recognised Mrs R may be at risk of harm from fraud. In addition to the fact she was making a large payment to cryptocurrency that appears to have been out of character with previous activity on her account, it had already declined a similar payment on 28 March, only a few days earlier. At that time, Santander required Mrs R to speak to one of its agents and didn't accept the payment instruction because she wasn't willing to discuss what it was for. Its agent confirmed during the call that this was a '*major red flag*'.

What did Santander do to warn Mrs R?

Before accepting each instruction for payments 1 to 11, Santander says it asked Mrs R in the app to confirm its purpose. Its records show she selected the option that said she was paying for a service rather than that she was investing or purchasing cryptocurrency. Based on this answer, it says she was then shown a written scam warning.

What kind of intervention should Santander have attempted before payment 1?

Having thought carefully about the risk this payment presented, I think a proportionate response to that risk would have been for Santander to attempt to establish the circumstances surrounding the payment before allowing it to debit Mrs R's account. I think it should have done this by, for example, speaking to her on the phone as it had in connection with the attempted payment on 28 March that presented similar risks.

If Santander had intervened as I've described, would that have prevented Mrs R's losses?

I've listened to a recording of Mrs R's conversation with Santander and I think it's clear she didn't appreciate this intervention. She was adamant that it was her own money and said she

was *'sick and tired'* of Santander telling her what she can and can't do with it. The agent took considerable time to explain the reason for asking about the payment, but Mrs R was convinced she wasn't being scammed and said the onus was on her if she was wrong. She went as far as saying she'd close her account if Santander kept interrupting payments and when the agent asked her what the payment was for, she outright refused to discuss it.

It's not clear Mrs R would have initially been any more receptive to a similar intervention on 2 April when she instructed payment 1. This notwithstanding, I'm conscious Santander permitted a payment it knew was going to cryptocurrency without offering a specific warning about the risks of cryptocurrency investment scams. While Mrs R's unwillingness to be clear about what the payments were for made it more difficult to uncover the type of scam that was taking place, Santander should have identified that cryptocurrency is an unusual way to pay for legitimate services. And given it had already identified concerns about the attempted payment on 28 March and Mrs R's response to its enquires, it should have realised fraud was a real possibility. And that the most likely type of scam associated with a purchase of cryptocurrency on this scale was an investment scam.

During a conversation with Mrs R about the payment, whether or not she was initially prepared to discuss what it was for, I would have expected Santander's agent to discuss the risks of cryptocurrency investment scams and provide a detailed warning setting out the common features – for example that scammers often advertise online, promise unrealistic returns, and set up accounts on fake websites that appear to show trades being carried out and profits generated on the victim's behalf. She could also have been advised of the importance of checking an investment company is registered with the regulator, the Financial Conduct Authority (FCA).

If Mrs R had received such a warning, I think she'd likely have recognised many of the common features of investment scams in her own situation and this would have opened her eyes to the likelihood that this is what was happening. It may also have prompted her to research the company on the FCA's register of authorised firms where she'd have discovered it wasn't authorised to carry out investment business in the UK. On balance, I think it's most likely that she'd have decided not to go ahead with the payments.

Is it fair and reasonable for Santander to be held responsible for Mrs R's loss?

I have taken into account that this money passed through a third party before it reached the scammers. But Santander should still have recognised Mrs R was at risk of financial harm from fraud, made further enquiries about the payments and ultimately prevented her loss. I think Santander can fairly be held responsible in these circumstances.

While I have considered all of the facts of the case, including the role of other financial institutions involved, Mrs R has chosen not to pursue a complaint about any other firm and I can't compel her to do so. And, I don't think it would be fair to reduce her compensation because she's only complained about one firm when I consider that Santander should have prevented the loss.

Should Mrs R bear any responsibility for her losses?

I've considered the evidence very carefully to decide what's fair and reasonable. While I accept Mrs R believed these payments were being made in connection with a legitimate investment opportunity, I'm not persuaded that belief was a reasonable one.

Mrs R has confirmed she received no written documentation relating to the investment and didn't carry out detailed research on the company she was investing with. If she had carried out further research, for example online searches, I think she'd have discovered the

company wasn't authorised by the regulator and that her circumstances were similar to those commonly associated with investment fraud. I'm also mindful that Mrs R didn't disclose the purpose of the payments when asked about this. I understand the reasons why she's said she didn't want to discuss this, but it only hampered any effort by Santander to identify the scam and protect her money.

Overall, I think it's fair and reasonable for Santander to make a 50% deduction from the redress payable.

Recovery of funds

I've also looked at whether Santander could or should have done more to try and recover Mrs R's losses once it was aware that the payments were the result of fraud.

I understand Mrs R didn't report the scam to Santander until several days after the last payment. It's a common feature of this type of scam that the fraudster will move money very quickly to other accounts once received to frustrate any attempted recovery and it's not a surprise that its attempts to recover her money weren't successful. I don't think anything Santander could have done would have led to her money being recovered after this period of time.

Further, the money was transferred via a legitimate third party that completed the service requested of it, that of accepting payment from Mrs R and transferring her money to the scammers. The fact the payment was made in this way means she's not eligible for any mandatory reimbursement.

In conclusion

For the reasons I've explained, I don't think Santander acted fairly and reasonably in its dealings with Mrs R and I'm upholding her complaint.

Putting things right

The principal aim of any award I make must be to return Mrs R to the position she'd now be in but for the errors or inappropriate actions of Santander, while allowing for any responsibility she should reasonably bear. If Santander had carried out an appropriate intervention as I've described, I'm satisfied the scam would have been stopped and Mrs R would have retained the money that was lost. As outlined above, I've applied a 50% deduction to the amounts to be refunded in recognition of her own contribution to the loss.

I can also see that Mrs R received some money back from the scam. As it's not clear which particular payment this related to, I think it should be deducted from the amount lost by apportioning it proportionately across all of the payments made to the scam. This ensures any return is fairly distributed.

To put things right, Santander should pay Mrs R compensation of $E + F$, where:

- A = the total of payments 1 to 11, representing the total amount paid to the scam;
- B = the total of all returns received from the scam;
- $C = A - B$, representing the total loss to the scam;
- $D = C$ divided by A as a percentage, representing the proportion of A that was lost to the scam;

- E = a refund of half of the percentage in D of each of payments 1 to 11, representing a 50% refund of the proportion of these payments that were lost to the scam; and
- F = simple interest on each amount being refunded in E at 8% per year from the date of the corresponding payment to the date compensation is paid.

Interest is intended to compensate Mrs R for the period she was unable to use this money. HM Revenue & Customs (HMRC) requires Santander to deduct tax from any interest. It must provide Mrs R with a certificate showing how much tax has been deducted if she asks for one.

I'm satisfied this represents a fair and reasonable settlement of this complaint.

My final decision

My final decision is that I uphold this complaint. Subject to Mrs R's acceptance, Santander UK Plc should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 12 November 2025.

James Biles
Ombudsman