

The complaint

Mrs G complains that Santander UK Plc hasn't protected her from losing money to an investment scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Mrs G has explained that in July and August 2023 she made seven transfers from her Santander account as a result of an investment scam. These transfers totalled £103,000. Mrs G received back, however, her final three transfers, taking her net loss to £66,000.

Santander didn't reimburse Mrs G's lost funds, and Mrs G referred her complaint about Santander to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent Mrs G and Santander my provisional decision on 31 January 2025. Now both parties have had fair opportunity to respond, I'm ready to explain my 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.

Mrs G told us that she accepts my provisional decision. Santander told us, in summary, that it thought the complaint should be pursued against who I'll call "Payment Institution C" (not Santander), as that was the relevant point of loss; that it was concerned about possible 'double recovery'; also it didn't think it did anything wrong or that further questioning of Mrs G at the time would likely have changed things. I've considered everything Santander has said, but the points it has made haven't persuaded me to change my mind. I've therefore reached the same conclusions as in my provisional decision and for materially the same reasons. I've explained my reasons again below with some further comment where I've deemed this appropriate to address Santander's response to my provisional decision.

I've decided to uphold this complaint in part. I'll explain why.

Santander explained to Mrs G why the Contingent Reimbursement Model (CRM) code doesn't apply to the transfers she made from her Santander account which she lost to the scam. The CRM code, however, didn't and doesn't replace other various and long-standing obligations payment service providers like Santander have to be alert to fraud and scams.

I accept these were authorised transactions even though Mrs G was tricked. So although Mrs G didn't intend the payments to ultimately be lost to scammers, Mrs G is presumed liable for the loss in the first instance. However, taking into account the law, regulatory 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 any payments made or received – to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate 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 banks and other payment service providers are generally more familiar with than the average customers; and
- have acted, since 31 July 2023 under the FCA's new Consumer Duty package of measures, 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, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Bearing this in mind, I need to decide whether Santander acted fairly and reasonably in its dealings with Mrs G when it processed the relevant payments.

In this case, I can see that Mrs G had telephone conversations with Santander, including on 21 July 2023 about her first payment which was for £10,000, and on 1 August 2023 concerning her second payment which was for £37,000. In both instances, I think Santander's questioning could have gone further than it did. However, the amount the first payment was for wasn't completely unusual for Mrs G's account. And I think that Santander's intervention on this first payment was probably proportionate enough, and that, in any case, it seems from how Mrs G has described the scam, that it's unlikely that a proportionate intervention from Santander would have stopped her proceeding at least with this first payment.

In this regard, I'm also aware who I'll call "Payment Institution R" questioned Mrs G about this £10,000 payment in-app (when Mrs G was then making the £10,000 payment out of her account with Payment Institution R, not Santander) and I'm satisfied there is nothing about this, nor Santander's intervention on this first payment, that persuades me Mrs G wouldn't have been open to an appropriate intervention from Santander on payment two which was in a significantly different context as explained below.

Mrs G's second payment, at £37,000, however, was significant indeed, and I think a robust intervention was now warranted. Santander processed this payment for Mrs G over the phone; the payment flagged such that the Santander agent spoke to Mrs G over the phone about her reasons for the payment. But I don't think what Mrs G told the Santander agent ought to have been reassuring. Mrs G said the transfer was being made to an account in her own name. However, by this time in 2023 Santander ought to have been well aware of how scams like this can work, including that customers often move money to a different account in their own name before moving it on again from there to the scammers. So this wasn't a good reason for Santander to feel reassured. And when Santander asked Mrs G what the payment was for, Mrs G said it was a Blockchain verification payment, essentially a liquidity check, she explained, before she could withdraw money. Mrs G also said she'd googled Blockchain and saw they had an app and she thought there was no way they'd have an app if they weren't genuine.

I haven't seen any evidence that Santander probed or warned Mrs G further than this before allowing the payment through, and I don't think this was fair. I say this because Santander ought to have been well aware from the nature of the information Mrs G had given it that she was at elevated risk of financial harm from fraud. And given that this was a very sizeable payment indeed, what Mrs G had said, and also the nature of the payment – apparently being to pay money in order to withdraw funds – Santander ought to have clocked this had all the hallmarks of an investment scam. I note that a different Santander agent who Mrs G spoke to after the scam told Mrs G that if he'd handled this call on 1 August 2023 he would have clocked the red flags. And I think it's fair to say Santander really ought to have done so.

The next question, therefore, is if Santander had questioned and warned Mrs G more fully and appropriately on 1 August 2023, as I think it should have, would this have prevented Mrs G's losses from that point? In cases like this where I can't be sure about something, I need to make up my mind based on the balance of probabilities, in other words based on what I think most likely would have happened taking into account all the available evidence and arguments.

And in this case, I think it's most likely that Mrs G wouldn't have proceeded with the payments from this point. In deciding this, I'm aware of the nature of Mrs G's WhatsApp communications with the scammer who in this case I'll call "fraudster J". In particular, on 1 August 2023 at 7.03pm, fraudster J asked Mrs G whether she'd spoken to Santander, Mrs G replied "*Yea, it was easy actually. The funds have already gone from Santander!*", and fraudster J replied "*Ok, I still think they might call you tomorrow morning, you just tell them everything is okay, let the transaction go through and that's it*". But I don't think this is a case where Mrs G was really under the spell of the scammer. So far she'd been tricked by the scam. But she was upfront with Santander in her calls with it, and nothing I've seen persuades me she wouldn't have continued to have been if Santander had probed and warned her further on 1 August 2023 as I think it should have.

So I think if Santander had done what it should have on 1 August 2023, during that call Mrs G would have shared the context and background about how fraudster J had been helping her invest, and how this payment was now for Blockchain. I think an appropriately strong warning from Santander, explaining that this sounded like a scam, and asking whether she was sure she was dealing with who she thought she was dealing with, would have resonated with Mrs G. This was a large payment. Whilst the liquidity circulation payment agreement Mrs G had been sent was apparently on Blockchain headed paper, she has presented a wallet statement dated 21 to 22 July 2023 headed with a website which had fraud reviews posted about it online before Mrs G's payment, which Mrs G could well have seen had she looked further into things. Also, it's noteworthy that Mrs G did uncover the scam later in August 2023 when the requests from the scammers became unconvincing to her and she researched the real J online (whom fraudster J had so far been impersonating); she found the real J's date of birth didn't match how old fraudster J sounded on the phone; she then phoned the real J's office which uncovered the scam, and Mrs G then contacted the real Blockchain which further cemented the uncovering of things. So I think that if Santander had warned Mrs G as robustly as I think it should have, this likely would have happened sooner, such that Mrs G's loss of payments two to four would have been avoided (I also think Mrs G wouldn't have made payments four to seven but Mrs G has already received those back).

Recovery

I understand these payments were sent on ultimately to crypto exchanges to be changed into crypto and sent to the scammers. By the time Santander was on notice Mrs G had been scammed, the funds wouldn't have been available to recover, so I can't say Santander unreasonably hindered recovery of the funds when it was put on notice Mrs G had been scammed. And if Santander had stopped Mrs G from proceeding on 1 August 2023 I don't think the first payment would have been recoverable then either for the same reason – it would already have been sent on as crypto to the scammers.

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

In reaching my decision about what is fair and reasonable, I have taken into account the first payment was made from Mrs G's Santander account to her account with Payment Institution R, and Mrs G has said she considers herself responsible for the loss of this payment and so didn't pursue a complaint about Payment Institution R. Indeed Payment Institution R has confirmed that none of this money was recovered by or from them. Then, payments two to seven were to Mrs G's account through Payment Institution C but actually Payment Institution C was actually here only acting as an intermediary payment service provider because the payments were actually going to Mrs G's account with an overseas payment institution not regulated by the FCA. There is no suggestion or persuasive evidence I have seen that Mrs G received anything back from this overseas payment institution other than the returned last three payments; Mrs G has confirmed she didn't pursue a complaint about them. But, in any event, as I've set out above, I think that Santander still should have recognised that Mrs G might have been at risk of financial harm from fraud when she made these payments from her Santander account, and in those circumstances it should have intervened more fully with payment two and this would likely have prevented Mrs G's losses from that point. The fact that the money wasn't lost at the point it was transferred to Mrs G's accounts with other payment institutions does not alter that fact, and I think Santander can fairly be held responsible for Mrs G's loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against the firm that is the point of loss.

I've also considered that Mrs G has only complained against Santander. I accept that it's *possible* that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Mrs G could instead, or in addition, have sought to complain against those firms. But Mrs G has not chosen to do that and ultimately, I cannot compel her to, nor is Mrs G obliged to provide an explanation to Santander as to why she has chosen to complain only about Santander. In these circumstances, I can only make an award against Santander.

I'm also not persuaded it would be fair to reduce Mrs G's compensation in circumstances where: the consumer has only complained about one respondent from which they are entitled to recover their losses in full; has not complained against the other firms (and so is unlikely to recover any amounts apportioned to that firm); and where it is appropriate to hold a business such as Santander responsible (that could have prevented the loss and is responsible for failing to do so). That isn't, to my mind, wrong in law or irrational but reflects the facts of the case and my view of the fair and reasonable position.

Ultimately, I must consider the complaint that has been referred to me (not those which haven't been or couldn't be referred to me) and for the reasons I have set out above, I am satisfied that it would be fair to hold Santander responsible for Mrs G's loss from the second payment onwards (subject to a deduction for Mrs G's own contribution which I will consider below).

Should Mrs G bear any responsibility for her loss?

I've thought about whether Mrs G should bear any responsibility for the loss of the £56,000 I've said Santander should have prevented. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in the circumstances of this complaint.

In this case, I don't think it's unfair to say Mrs G wasn't as careful as she reasonably should have been. There was documentation in her possession that reasonably ought to have caused her concern if she'd looked into things as much as I'd reasonably expect given how much money she was investing and paying. That said, whilst I think Mrs G reasonably ought to have been more careful, given Mrs G's actions and Santander's failures, I think it's fair that Mrs G accepts responsibility for the loss of 25% of the £56,000, but not more than this. So, I'm persuaded in this case that a fair outcome would be for Santander to pay Mrs G 75% of the £56,000 loss, which is £42,000.

Interest

I consider 8% simple interest per year fairly reflects the fact Mrs G has been deprived of this money. So Santander should also pay Mrs G interest on the £42,000 from the date of loss to the date of settlement calculated at this rate.

My final decision

For the reasons explained, I uphold this complaint in part and I direct Santander UK Plc to pay Mrs G:

- £42,000; plus
- interest on this amount calculated at 8% simple per year from the date of loss to the date of settlement (if Santander deducts tax from this interest, it should send Mrs G the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 8 April 2025.

Neil Bridge
Ombudsman