

The complaint

Ms S has complained that Santander UK Plc won't refund the money she lost after falling victim to a scam.

What happened

In early 2022, Ms S entered into a cryptocurrency investment scam after being contacted on social media by scammers posing as an investment firm. Over the course of about two weeks, Ms S sent around £12,000 to the scammers across 7 payments. She did this by making credit card and debit card payments from her Santander accounts to her crypto account, then she sent crypto on to the scammers.

Ms S was unable to withdraw her money and was told to pay up front fees. She realised she'd been scammed. Santander didn't think it was liable for Ms S's loss.

Our Investigator looked into things independently and partially upheld the complaint. Santander didn't agree, so the complaint's been passed to me to decide.

I sent Ms S and Santander a provisional decision on 16 July 2025, to explain why I also thought the complaint should be partially upheld. In that decision, I said:

I understand that Ms S fell victim to a cruel scam and was going through a truly tough time more generally, for which I empathise. I appreciate this cannot have been an easy matter for her to face. I must keep in mind that it's the scammers who are primarily responsible for what they did and the distress they caused. But in this case between Santander and Ms S, I must focus on what Santander and Ms S are responsible for.

There's no dispute that Ms S authorised the payments involved, even if she didn't intend for the money to go to scammers. So under the Payment Services Regulations and the terms of her account, Ms S is liable for the loss in the first instance. But the matter doesn't end there.

Taking into account the law, regulator's rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, I consider that Santander should have fairly and reasonably:

- *Monitored accounts and payments to counter risks such as fraud and scams;*
- *Had systems in place to look out for particularly unusual transactions or other signs its customers were at risk of fraud;*
- *In some circumstances, taken further steps or made further checks before a payment went out, or even blocked it, to help protect customers – irrespective of the type of payment involved.*

While I'm glad to see that Santander did do some intervention at the end, I think it should have intervened earlier, at the point of the 6th payment, of £4,538.87. That payment was much larger than any of Ms S's spending in the prior period, and represented a concerning pattern when combined with the other crypto payments she'd been making in the prior days. It was going to a recently new payee, which was a crypto site. And while at that time Santander may not have been quite as aware of crypto risks as they were in later years, they would've reasonably understood that such payments carried a higher risk, not least given published warnings and given their own staff noted in their intervention call that they were seeing a lot of scams and issues with that particular crypto site at the time. This payment also drained Ms S's account and took it well into an overdraft. So I think payment 6 stood out as being remarkable, and should have prompted Santander to intervene.

*In reaching my decision that Santander should have made further enquiries, I've taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC* [2023] UKSC 25.*

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. In summary, among other things, it said:

- 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.*

In this case, Santander's terms and conditions gave it rights (though not obligations) to:

- 1. Refuse any payment instruction if it reasonably suspects it relates to fraud or any other criminal act.*
- 2. Delay payments while fraud prevention checks take place, with the potential need to contact the accountholder if Santander suspects that a payment is fraudulent. Such contact could be by phone.*
- 3. Suspend payment methods for security reasons or to prevent fraud.*

So the starting position in law was that:

- Santander was under an implied duty at law to make payments promptly.*
- It had a contractual right not to make payments where it suspected fraud.*
- It had a contractual right to delay payments to make enquiries where it suspected fraud.*

- *It could therefore refuse payments, or make enquiries, where it suspected fraud, even if it was not under a contractual duty to do either of those things.*

While the account's terms did not oblige Santander to do fraud checks, I do not consider that any of these things (including the implied basic duty to make payments promptly) precluded Santander from making fraud checks before making a payment.

And while Santander was not required or obliged under the contract to make checks, I am satisfied that, taking into account 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 lookout for the possibility of fraud, and should have taken additional steps – or made additional checks – before processing payments in some circumstances, such as in the circumstances of this case.

So for the reasons I've explained, I find that Santander should have intervened in this case.

Had Santander intervened at that point and asked reasonable questions, it seems most likely that it could have uncovered the scam and stopped any further loss. Ms S was open and honest with Santander when she did speak to them not long after, and she had no good reason to lie. And the matter bore many hallmarks of a prominent type of scam – a scam the later call handler noted Santander were often seeing. For example, being cold contacted on social media for an investment, being offered guaranteed returns, the use of cryptocurrency, up front fees being needed to withdraw, and so on. So I think Santander would've been able to quickly identify what was happening and prevent it. It looks like Ms S already had doubts about the scam by that point. So had Santander blocked these payments outright going forward, and sufficiently strongly set out to Ms S that this was almost certainly a scam, I think it's most likely it could've stopped the loss there.

Santander argued that it should not be held liable, because these payments went to an account in Ms S's name. But Santander should have fairly and reasonably been on the lookout for potentially fraudulent payments, even if the payments were going to another account in the customer's name. There were prominent scams around at the time which involved paying an account in one's own name – like this one. And identifying and preventing such scam payments would still have the effect of preventing a loss to its customer. So Santander can still be held liable for a loss which resulted from its failure to intervene – which is what I've found to have most likely been the case here.

So I currently think that Santander bears some liability for the loss from the 6th payment (of £4,538.87) onwards.

I've also thought carefully about Ms S's role in what happened. I do appreciate that Ms S was going through a truly tough time, and that the scammers appeared professional and gave her a picture of what they said was a staff member's ID. But I'm afraid I think Ms S ought to have had more concerns along the way about what she was being told and asked to do, and I don't think she had a reasonable basis to believe the scammers by that point. For example, she'd been cold contacted on social media with an unrealistic offer, and she doesn't seem to have looked up the firm – a quick internet search at the time should've revealed existing scam warnings. She also knew about the up-front withdrawal fees by that point, and from her conversations with the scammers and Santander it looks like she reasonably suspected that that was probably not legitimate. So I don't think I can fairly hold Santander solely liable for Ms S's loss from the 6th payment onwards. I think Ms S should share liability for that loss.

Finally, I've considered whether Santander could've reasonably done more to recover Ms S's money after she told it about the scam. Unfortunately, as Ms S had paid her own crypto account and then sent the funds on, it wasn't possible to recover them. As these were card payments to her own crypto account, they weren't covered by the CRM Code for scams. And there was no chargeback reason which would've been appropriate here. A chargeback would've been a claim against the exchange rather than the scammers. And the exchange provided the service they were supposed to. There was no realistic prospect of success for a chargeback, and chargebacks are voluntary. So Santander didn't need to try one in this case. As such, there was nothing more they could've reasonably done there.

So based on what I've seen so far, I think Santander bears some liability for the loss from the 6th payment onwards, and it should settle the complaint in the way I've outlined below.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 30 July 2025.

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.

In response to the provisional decision, Santander didn't provide anything further.

Ms S accepted the provisional decision. Her representatives asked if Santander would kindly provide them with a breakdown of any refund it pays, explaining they don't have the figures themselves as Ms S has since consolidated the debt.

Other than that, neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

Putting things right

I direct Santander UK Plc to:

- Rework the accounts involved to reverse 50% of the loss from the 6th payment (£4,538.87) and 7th payment (£1,509.77).
- For the portion of that reimbursed loss which came from Ms S's own current account in-credit balance: pay simple interest on that portion at the rate of 8% simple per year, payable from the date of the loss until the date of settlement.
- For the portion of that reimbursed loss which came from Ms S's credit card debt or overdraft: refund any related interest and charges caused by that loss. If it emerges that Ms S has made overpayments to pay for that loss, Santander should pay her 8% simple interest on the overpayments, payable from the date each overpayment was made until the date of settlement.
- Adjust Ms S's credit file entries to reflect the balances those accounts would've had had that loss not happened, and remove any adverse data caused by that loss.

- Provide a breakdown of their calculations for the above.

If Santander considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from the 8% simple interest, it should tell Ms S how much tax it's taken off. It should also give Ms S a tax deduction certificate if she asks for one. Ms S may be able to reclaim the tax from HMRC if she doesn't normally pay tax.

My final decision

For the reasons I've explained, I uphold Ms S's complaint in part, and direct Santander UK Plc to put things right in the way I set out above.

If Ms S accepts the final decision, Santander UK Plc must carry out the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 28 August 2025.

Adam Charles
Ombudsman