

## The complaint

Mrs S is unhappy that Santander UK Plc hasn't reimbursed losses suffered as a result of a scam.

## What happened

The details of this complaint are well known to both parties, so I won't repeat them in full here. Instead, I'll summarise what happened and focus on giving details of our Services' involvement and the reasons for my decision.

Mrs S came across a cryptocurrency investment opportunity online that she believed was celebrity endorsed and which promised high returns in a short time. She was then put in touch with scammers which resulted in accounts being opened at two other financial businesses. Payments were subsequently made to these accounts as part of the scam (as set out in the table below), before being transferred onwards and lost to the scam itself. Mrs S advised that the scammers warned her not to tell the bank about the involvement of cryptocurrency otherwise she would not receive her profits. She didn't consider that was suspicious nor did she consider that she was lying to the bank when questioned, as that's what the scammers had told her to do. She believed they were a genuine trading company.

	Date	Payee	Type	Amount
1	28/05/2024	Mrs S new account 1	Faster payment out	£500.00 Dr
2	28/05/2024	Mrs S new account 1	Faster payment out	£2,000.00 Dr
3	28/05/2024	Mrs S new account 1	Faster payment out	£2,000.00 Dr
4	28/05/2024	Mrs S new account 1	Faster payment out	£2,000.00 Dr
5	28/05/2024	Mrs S new account 1	Faster payment out	£2,000.00 Dr
6	28/05/2024	Mrs S new account 1	Faster payment out	£2,000.00 Dr
7	28/05/2024	Mrs S new account 1	Faster payment out	£2,000.00 Dr
	06/06/2024	Mrs S new account 2	Faster payment in	£337.01 Cr
8	11/06/2024	Mrs S new account 2	Faster payment out	£500.00 Dr
9	11/06/2024	Mrs S new account 2	Faster payment out	£2,000.00 Dr
10	11/06/2024	Mrs S new account 2	Faster payment out	£2,000.00 Dr
11	12/06/2024	Mrs S new account 2	Faster payment out	£2,000.00 Dr
12	13/06/2024	Mrs S new account 2	Debit card payment	£200.00 Dr
	10/07/2024	Mrs S new account 2	Funds recovered	£70.99 Cr
			<b>Total outstanding loss</b>	<b>£18,792.00 Dr</b>

Mrs S contacted Santander raising a scam claim and asked it to reimburse her losses. It declined her claim and complaint on the basis that the funds paid out of her account with Santander credited external accounts she owned and it's from those accounts the losses occurred. As such it considered Mrs S was not at a financial loss once the funds debited her Santander account.

Mrs S subsequently brought her complaint to this service through help from a personal representative. One of our investigator's considered Mrs S' complaint. He recommended it

be upheld, with Mrs S to receive a refund of half of her loss, plus interest. In summary, he said:

- Despite the limited available evidence, given her testimony and surrounding circumstances he was satisfied Mrs S had fallen victim to a cryptocurrency investment scam.
- He was satisfied the payments were authorised by Mrs S.
- Santander did intervene, but he wasn't satisfied they did enough. Given the concerns raised by Santander during this intervention, he considered the most appropriate course of action was to refer Mrs S to branch and was persuaded that further losses to the scam would have been prevented. So he felt it was fair and reasonable for Santander to be held accountable for a portion of it.
- Given Mrs S' account activity, he also considered that Santander ought to have intervened sooner than it did.
- Mrs S ought to bear some responsibility for the loss given the alleged rate of return on offer which was too good to be true and because she did mislead Santander when questioned about her activity.

Santander responded to the investigator's recommendations to say it disagreed. Whilst it was not suggested that Mrs S was not a victim of a scam, it maintained its view that she had not suffered a loss from her account and that her only recourse should be via the other financial businesses in which the funds were actually lost. Santander were also in disagreement that an earlier intervention would have broken the scammers spell given the intervention that did take place. As an agreement couldn't be reached, the case has been passed to me to decide.

I contacted Santander UK Plc informally, as our rules allow. I explained the following:

I'd firstly like to respond to Santander's comments regarding the Supreme Court ruling in *Philipp v Barclays Bank UK PLC*, which reiterated banks generally have a contractual duty to make payments in compliance with the customer's instructions.

But that's not the end of the matter. Our service has issued many decisions setting out the relevant considerations we take into account when deciding what's fair and reasonable in these types of cases. I don't consider it necessary to repeat them all here, though Santander will be able to review these through past decisions on our website if it wishes to do so.

To summarise, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider was 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 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 that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- 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, as in practice all banks do.
- Have 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.

There's no dispute Mrs S authorised all the payments in question, nor that they were sent to accounts in her name with two other financial businesses. Just as our investigator, I'm satisfied Mrs S has fallen victim to a scam and the case has been considered on that basis and that payments totalling £19,200 were made to her accounts with two other financial businesses. I've also reviewed her account statements with those financial businesses showing that no funds remain on those accounts. Rather, what we do see are payments of £337.01 returned to her account with Santander on 6 June 2024 and £70.99 also returned to her account on 2 July 2024. As such, Mrs S' total outstanding loss amounts to £18,792.

I would also add that ultimately we can't compel Mrs S to complain to those two other financial businesses, though both have confirmed with this service that no complaint has been raised with them, therefore I'm satisfied there isn't a concern of double recovery here. As such, what I've considered is the complaint brought against Santander just as our investigator has.

Like our investigator I'm satisfied there was enough going on much earlier with her account activity, that Santander ought to have intervened. From the statement history provided dating back to September 2023, there isn't a single outgoing faster payment made from her account and her account balance was regularly maintained around £13-14,000. As such I'm inclined to agree with our investigator for much the same reasons, that given the very simple operation of Mrs S' account prior to the scam payments – those namely being limited to regular cash withdrawals, card payments and direct debits, Santander ought to have intervened sooner than it did and by the third payment to a newly set up payee of £2,000 on 28 May 2024. At that stage £6,500 had been remitted out of the account in a short period which was out of character.

I am aware that Santander did intervene. And there were two distinct payments of £2,000 it intervened on later during the 12 June 2024. I'm not satisfied the first went far enough. The call handler spoke at pace and made a number of assumptions about the activity including assuming the other account wasn't new because she could see a credit had been received in.

She also made an assumption that a previous colleague would have already gone through a scam script with Mrs S – but that evidence hasn't been provided if it did take place. I'm not satisfied this call went far enough in its questioning of Mrs S and her activity.

On the contrary a later call that same day about another attempted £2,000 was far better. The call handler challenged a number of Mrs S' responses including the following:

- Why Mrs S had recently opened two new accounts with two other financial businesses
- Why she was making payments for building works that had not yet even started
- That a loan was recently taken out and payments couldn't have been made directly from her account with Santander instead

Despite Mrs S' responses and assurances that she wasn't being scammed, your call handler explicitly tells Mrs S that 'the conversation we've had isn't adding up and I don't personally think you're being honest'. So regardless of the conversation that had taken place where Mrs S had been questioned and given warnings about various scams, your call handler remained concerned. But I can't agree that simply allowing Mrs S 5/10 minutes to have a think about the conversations that had just taken place was an appropriate next step when clear concerns about Mrs S' honesty had been identified. Furthermore, the follow-up

question in the subsequent call was simply to ask Mrs S whether the payments were still genuine. I'm in agreement with our investigator that Mrs S ought to have been referred to branch, and I'm satisfied that had such an intervention taken place that the scam would have been prevented. The bank ultimately is the financial expert here and Mrs S could have been asked to furnish staff with evidence of her contact with the alleged builder – which of course she would not have been able to do so, because this wasn't genuine. And I'm satisfied that payments to the scam would've been prevented as I can't agree her responses would have stood up against the level of scrutiny I'd have expected in these circumstances in a face to face environment.

I also went on to explain that I was also in agreement with our investigator that it's fair for Santander to make a deduction for contributory negligence on the basis that Mrs S knowingly misled the bank even after she was presented with scenarios that aligned to the scam she was falling victim to. As such, I'd consider it fair for Santander to refund Mrs S' outstanding loss from the third £2,000 payment on 28 May 2024, less a deduction of 50% for contributory negligence. Santander should also pay 8% simple interest from the date of the payments to the date of settlement reflecting the time she's been without these funds.

Santander acknowledged its review of my comments and whilst it respected Mrs S' choice not to complain to the other financial businesses, it said this did not change the fact that no loss occurred at the point her funds left her Santander account and there is no regulatory basis to hold them responsible. Therefore, its position on this case had not changed.

As such I'm now proceeding to make a decision on this case.

### **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.

I don't seek to set out what I'd already explained to Santander in attempting to resolve this case informally as I've shared above.

Santander hasn't argued against the application of most of the considerations I'd set out. It hasn't suggested it needn't monitor accounts, intervene in payments, or warn against common scams. And indeed, it's evident it did step in to questions some of the payments made by Mrs S. So, it's clear that, in practice, Santander does these things.

Instead, Santander argues it ought not be responsible for Mrs S' loss because that loss crystallised elsewhere; with a different financial business which ought to bear responsibility.

But it remains true that Santander could have prevented Mrs S' loss. If it had properly intervened and taken action as I consider it ought to, and should have, identified the scam. The proposals from the scammer bore the typical hallmarks of a cryptocurrency investment scam, including unrealistically high returns in a short period of time. As I've already explained, Santander weren't satisfied with the responses Mrs S had provided when questioned such that it would not immediately process the payment. As such, when Santander chose to allow Mrs S 5/10 minutes to have a think about the conversations that had just taken place, I can't agree this was an appropriate next step. As I've already explained, the bank ultimately is the financial expert here and had Mrs S been directed to branch, she ought to have been asked to furnish staff with evidence to support the answers she was providing them with. I remain satisfied that payments to the scam would've been prevented by Santander as I can't agree Mrs S' responses would have stood up against the level of scrutiny I'd have expected in these circumstances in a face-to-face environment.

Santander would also have had the option to invoke Banking Protocol and involve the police had it remained unhappy with her responses.

This means the loss to Mrs S' was both identifiable and preventable at the point the payments were being made from her Santander account. The scam could have been stopped given Santander were already discussing the account activity. And as I already set out previously, considering Mrs S' account activity Santander ought to have intervened sooner than it did and by the fourth disputed transaction on 28 May 2024 for £2,000.00 as set out in the table of disputed transactions. It's then fair and reasonable to find Santander ought to bear some responsibility for the loss from the point in which I consider it ought to have identified a risk, but ultimately when it did, failed to act proportionately.

It may be that the other financial businesses involved here ought fairly and reasonably also bear some responsibility for Mrs S' loss. But we have no complaint about those firms, and they have both confirmed with this service that no complaints have been raised with them. Therefore, I'm satisfied there isn't a concern of double recovery here when deciding this case. As previously explained, I can't compel Mrs S to make such complaints. I can only deal with the complaint that is before me.

Having established that Santander ought to bear some responsibility I now turn to Mrs S' actions. Our investigator found she'd not acted reasonable and ought to share some responsibility for her loss equally with Santander. I've set out the reasons reached on this position in the section above.

Mrs S nor her representative didn't raise any objections to those recommendations. And I see no reason to depart from them. I find it's fair and reasonable for Mrs S to be equally responsible for her loss given all the circumstances.

Lastly, as already explained by our investigator, having reviewed Mrs S' account statements the payments were made to, the funds were moved onto other accounts shortly after they were received, so it's unlikely Santander would have been able to recover any funds once Mrs S had made them aware of the scam. That said, Santander were able to recover a small sum as set out in the table of transactions above.

### **Putting things right**

For the reasons I've explained, my final decision is that I partially uphold Mrs S' complaint. Santander UK Plc

- 50% of her outstanding loss, from and including the fourth disputed transaction made on 28 May 2024 of £2,000.00
- 8% simple interest per year on that amount from the date of each payment 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 S how much it's taken off. It should also give Mrs S 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 partially 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 S to accept or reject my decision before 9 February 2026.

Mark O'Connor  
**Ombudsman**