

The complaint

Miss P complains that Santander UK Plc didn't do enough to protect her from the financial harm caused by an investment scam, or to help her recover the money once she'd reported the scam to it.

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 September 2021, Miss P met someone on a dating site who I'll refer to as "the scammer". She thought users of the site were vetted and the scammer was 'verified', meaning the relevant background checks had been carried out. And she could see he had a social media profile with 200 followers, which he used regularly to post family photographs.

Miss P communicated with the scammer for over a month on the dating site, before moving on to WhatsApp. They spoke about their everyday lives, hobbies and interests, and scammer talked about his children and his late wife. He began to speak of his feelings for Miss P and by the time he introduced the idea of investing, she felt a relationship was forming, even though she was never able to speak to him on the phone (he told her he preferred to send text messages because his English wasn't very good).

The scammer said he was a property investor and sent Miss P a link to an investment company I'll refer to as "M". Miss P noted the website was professional and featured an 'About Us' page, a market research area, a 24-hour help desk and multiple reviews. She was also satisfied that a google search didn't uncover anything to suggest M was a scam and she could see it was registered with Companies House.

Miss P was told to open account and with a cryptocurrency exchange company I'll refer to as "C". She was instructed to first purchase cryptocurrency through a C and then load it onto an online wallet. She was told she could make £1,000 profit from a £1,000 investment and that she could easily make withdrawals from the trading platform. She made an initial payment of £2 and between 19 November 2021 and 8 January 2022, she made five transfers to C totalling £16,000 from her Santander account.

Miss P believed she was sending the funds to accounts in her own name and that she could see her genuine returns on the trading platform. But in January 2021, the scammer became aggressive and tried to pressure her to make further payments. She told him she'd run out of money and wanted to withdraw her funds and received an email from M telling her she'd have to pay tax on her profits. When she questioned this, she was told her account had been frozen, at which point she realised she'd been scammed.

Miss P complained to Santander but it refused to refund the money she'd lost. It said she had authorised the transactions using the security details it had provided to her and a One Time Passcode ("OTP") which she'd entered to authenticate the transaction.

It said it contacted the beneficiary bank the day she raised the claim but it wasn't able to recover any funds, and the payments weren't covered under the Contingent Reimbursement Model ("CRM") code because they were made to an account in her own name which she had had full control over.

Miss P wasn't satisfied and so she complained to this service with the assistance of a representative. She said Santander didn't intervene in any of the payments and she didn't receive any calls, texts or scam advice until after she reported the scam. She said she wanted it to refund the money she'd lost and to indemnify her against any legal costs arising from the complaint.

Her representative said Miss P made five high-value, irregular payments to a new payee totalling £16,000. She received no contact from Santander via pop-up, text message, telephone or email and had it done so she wouldn't have proceeded with the payments.

They explained the largest regular payment on the account was for her mortgage, besides which the largest payments were to her own accounts for savings or to family members, who were long-standing payees. And she had never made payments to C, so the payments were unusual, so Santander should have questioned her about the payments. They argued that when Miss P made the payments, cryptocurrency scams had risen in frequency and Santander would have been able to identify that they were being made in relation to a scam.

Santander explained that when Miss P made the first payment of £2, she selected 'transfer to own account' as the reason for the payment and was presented with the following warning: *'if you have been told that your account is at risk and to move money, this is a scam. What should I do? Could this be a "safe account" scam? If someone's contacted you, even Santander or the police, and said that your account is at risk and you need to transfer your money to a "safe account" or a new account in your name, this is a known scam. Please cancel this payment now and call us immediately.'*

Our investigator didn't think the complaint should be upheld. He explained the first three payments were low value, so there would have been no reason for Santander to intervene. And even though the fourth payment of £11,000 was high value, in the period leading up to that payment, Miss P had made several large transfers to other accounts in her name of similar or higher value. So she scam payments weren't unusual when compared to the other spending on the account. He further explained there was no other contact with Santander at the time of the payments, so there were no opportunities to intervene.

Miss P has asked for the complaint to be reviewed by an Ombudsman. Her representative has re-iterated that the disputed payments, in particular the £11,000 payment, were highly irregular as the largest payment from the account was a mortgage payment. The other larger payments were to Miss P's own bank accounts for savings or to other family members, all of which are long-standing payees.

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 conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Miss P has been the victim of a cruel scam. I know she feels strongly about this complaint and this will come as a disappointment to her, so I'll explain why.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Miss P says she's fallen victim to, in all but a limited number of circumstances. Santander has said the CRM code didn't apply in this case the disputed took place before the code came into force, and I'm satisfied that's fair and applies to all of the four bank transfer payments.

I'm also satisfied Miss P 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of her bank account, Miss P is presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Miss P didn't intend her money to go to scammers, she did authorise the disputed payments. Santander is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether Santander could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, Santander ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Miss P when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Santander to intervene with a view to protecting Miss P from financial harm due to fraud.

Other than the warning that was displayed when Miss P made the first payment, the payments didn't flag as suspicious on Santander's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Miss P normally ran her account and I don't think they were. All the payments were to a legitimate cryptocurrency exchange and the first three payments were low value, so I don't think Santander needed to intervene. The fourth payment of £11,000 was the largest of the five payments Miss P made to the scam and I accept it is significantly higher than the first three payments. However, as our investigator has pointed out, on 5 September 2021, 6 September 2021, 8 September 2021, 9 September 2021, 10 September 2021 and 14 September 2021, Miss P had made transfers out of the account for £10,000 and so £11,000 wasn't unusual for the account.

And while I accept these transfers were to an account in Miss P's own name for savings, the £11,000 payment to C was also to an account in Miss P's name and this was the fourth time she'd paid this payee in six days, so I don't think the payment was suspicious or that Santander needed to intervene.

Because of this, while I understand Miss P will be disappointed, I don't think Santander failed to intervene in circumstances which could have prevented her loss and so I can't fairly ask it to do anything to resolve this complaint.

Overall, I'm satisfied Santander took the correct steps prior to the funds being released – as well as the steps it took after being notified of the potential fraud. I'm sorry to hear Miss P has lost money and the effect this has had on her. But for the reasons I've explained, I don't think Santander is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

Compensation

Miss P isn't entitled to any compensation or legal costs.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 18 March 2024.

Carolyn Bonnell
Ombudsman