

The complaint

Mrs B complains about Santander UK Plc.

She says that Santander didn't do enough to protect her when she became the victim of a scam and would like it to refund her the money she has lost.

What happened

The details of what happened are well known to both parties – so I won't repeat them here.

In summary, Mrs B came across an advert for investing in cryptocurrency on social media. Mrs B was interested in trying to make some money.

Mrs B wanted to know more and did some research online before coming across a company called Binetrixs. After the process was explained, she decided to go ahead. Unfortunately for Mrs B, this was a scam.

After initial supposed success, and payments back to her from the scammer which bolstered her confidence, Mrs B was told that her account was in flux, and she needed to make further payments to stop her funds from being lost, however after a while, Mrs B refused to send any more money and the scammer cut contact. She then realised she had been scammed and complained to Santander. Mrs B said that she didn't recall Santander intervening in the payments she was making in an effective way or providing her with any advice on crypto investment scams – and that it should have prevented the scam.

By this time, Mrs B had made the following payments as part of the scam.

Date	Payee	Payment type	Amount
29 December 2022	Coinbase	Faster payment	£200
30 December 2022	Coinbase	Faster payment	£300
12 January 2023	Coinbase	Faster payment	£7,500
16 January 2023	CRO	Card	£7,000
4 February 2023	CRO	Card	£5,098
4 February 2023	CRO	Card	£4,000
6 February 2023	CRO	Card	£7,724
6 February 2023	Foris Dax	Faster payment	£10,000
7 February 2023	CRO	Card	£4,634.55
9 February 2023	Foris Dax	Faster payment	£4,300
11 February 2023	Guala	Card	£1,000
11 February 2023	CRO	Card	£5,664.45
13 February 2023	Slickrevel	Card	£1,700
13 February 2023	Guala	Card	£2,000
22 February 2023	Inconomi	Faster payment	£5000
23 February 2023	Inconomi	Card	£100
1 March 2023	Banxa	Card	£2,000
2 March 2023	Banxa	Card	£10,000

		Total	£78,221*
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*Total doesn't include credits received back from scammer

Santander didn't uphold her complaint. Unhappy, Mrs B brought her complaint to this Service.

Our Investigator looked into things but didn't think that it should be upheld. They said that Mrs B hadn't been truthful with Santander about what she was doing – and that she had ignored warnings it provided to her.

Mrs B asked for an Ombudsman to make a final decision, so the complaint has been passed to me.

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 decided not to uphold this complaint for broadly the same reasons as our investigator. I know this will be very disappointing for Mrs B, so I'll explain why.

It isn't in dispute here that Mrs B has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

In broad terms, the starting position at law is that a banks, electronic money institutions (EMI's) and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

Mrs B authorised the payments in question here – so even though she was tricked into doing so and didn't intend for her money to end up in the hands of a scammer, she is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Santander should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking the above into account, 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 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 make 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.

This leads me to consider if Santander acted fairly and reasonably in its dealings with Mrs B when she authorised the payments from her account, and whether it could and should have done more before processing the payments.

Santander has provided this Service with several calls it had with Mrs B, throughout the time the scam was taking place – and having listened to these calls, I am not persuaded that Santander could have done any more than it did to try and prevent the scam. I'll explain why.

Throughout the calls, Santander said the following;

- Was a third party involved in the payments she was making,
- Had she been told to lie or conceal the true nature of the payments she was making,
- Had she downloaded any screen sharing software,
- Warned Mrs B about the prevalence of crypto scams,
- Explained that Mrs B was making payments to Nigeria – and was she aware of this,
- Had she been promised unrealistic returns,
- Directed Mrs B to the Financial Conduct Authority (FCA) website to check that the firm was regulated (which it wasn't),
- That if any of the above applied, it was a scam and that she shouldn't proceed.

Mrs B was clearly annoyed with Santander's repeated questioning – and asked if she was always going to have this problem – she said that she was already aware of the risks of crypto and was adamant she wanted to proceed.

She also didn't divulge critical information to Santander either – even though all of the above applied in her circumstances. Mrs B also obtained two loans to fund the scam – one of which was from Santander – and she wasn't honest about the purpose of the loan either.

So, I don't think that there was much more Santander could have done to prevent what happened here, as Mrs B was clearly so taken in by the scammer that she was willing to conceal what she was doing – even though Santander an established financial institution, gave her clear, direct warnings about crypto scams.

I know that Mrs B and her representatives say that Santander should have invoked the Banking Protocol – where a customer is directed to visit branch staff before a payment was released – and that this would have broken the spell. But I am not persuaded that even taking this further action would have dissuaded Mrs B from what she was clearly determined to do.

I am very sorry for the situation Mrs B now finds herself in – I know she is embarrassed and upset by what has happened here. But this is the fault of the scammer – not Santander. And I can't ask Santander to refund her the money she has lost when I don't think it has done anything wrong.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 14 June 2024.

Claire Pugh
Ombudsman