

The complaint

Ms D is unhappy that Santander UK Plc will not refund the money she lost as the result of an authorised push payment (APP) scam.

Ms D has used a representative to bring her complaint to this service. For ease, I will refer solely to Ms D in this decision.

What happened

As both parties are familiar with the details of the scam I will not repeat them in full here. In summary, Ms D lost £21,006.92 in an investment scam. She made four payments, the first by credit card for £251.32 on 12 June 2019 (£244.40 was refunded), then £1,000 on 27 June 2019, £10,000 on 4 July 2019 and £10,000 on 19 July. The last three were faster payments to an account in her own name to allow her to then trade in cryptocurrency and commodities via company F.

She had proactively sought the investment opportunity and researched the company, finding good reviews online. Ms D says the scammer invested significant time working with her, helping her open the account she needed using remote access software and corresponding with her frequently in a professional manner.

Santander says Ms D's losses were not from the account she holds with it and she needs to try to recover her losses from the entity she transferred the money to.

Our investigator did not uphold Ms D's complaint. She thought Santander ought to have intervened when Ms D made the last payment, but she did not think an effective intervention would have stopped Ms D making the payment.

Ms D disagreed, saying Santander ought to have intervened on 4 July 2019 and had it done so it would have detected the scam as there were known hallmarks of investment scams.

I reached the same conclusion as the investigator but made different findings so I issued a provisional decision. An extract follows and forms part of this final decision.

Extract from my provisional decision

There's no dispute that Ms D made and authorised the payments. Ms D knew why she was making the payments. At the stage she was making these payments, she believed she was transferring money to a new account she had set up and from there she would be able to invest via a cryptocurrency and commodities trading platform run by company F. I don't dispute Ms D was scammed and she wasn't making the payments for the reason she thought she was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Santander has an obligation to follow Ms D's instructions. So in the first instance Ms D is presumed liable for her loss. But there are other factors that must be taken into account.

To reach my decision I have considered the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, as the payments were not made to an account held by another person the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think that Santander should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.*
- had systems in place to look out for unusual transactions or other signs that might indicate that 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 financial institutions are generally more familiar with than the average customer.*
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.*

In this case I do not think Santander ought to be held liable for the transactions. I'll explain why.

When Ms D made the first payment of £10,000 I think Santander ought to have intervened. There were no payments of even close to that value from the account in the previous 12 months, it was unusually high in value for the account and a clear deviation from how the account normally operated. This means I need to consider what would most likely have happened had Santander made a proportionate intervention.

I would have expected it to ask a number of questions to ensure it understood the basic context surrounding the payment. And as I have no reason to think Ms D would not have told Santander she was investing in cryptocurrency and commodities it ought to have given her a meaningful investment scam warning. However, I don't think based on the likely responses Ms D would have given to a proportionate level of questioning Santander would have concluded she was at risk of financial harm. I'll explain why.

The Financial Conduct Authority (FCA) had not published any warnings about company F at this time. And Ms D came across the company while researching investments, so there wasn't a red flag relating to how she'd learned about the company. I haven't seen any evidence that Ms D was promised unrealistic returns and she was satisfied she'd done due diligence. She'd seen positive reviews online about the company and she was reassured because she had to provide ID to open the account. She clearly trusted the contact she had at the company, she thought he was knowledgeable and professional and he was always available. She was also able to see her trades on its trading platform and the scammer had told her there was a 'stop loss limit' on each trade so she felt protected. Ms D had received documentation after her first trade further reassuring her the opportunity was legitimate. The recipient was not a new payee by this stage, nor had the payments been made in rapid succession, or drained the account.

So, I don't think there was anything Santander could have said which would have changed her mind about the investment or anything it could have advised her to do which would have uncovered the scam.

Ms D also raised that she was vulnerable at the time of the scam, saying she was distracted with her business. But she had not evidenced that Santander was on notice of this, or explained how she was impacted, so it does not change my findings.

I have then thought about whether Santander did what we would expect to try to recover Ms D's money after she reported the scam. This was some time after it occurred, in May 2023. So I cannot reasonably expect Santander to have successfully recovered the money given the time that had passed, particularly as Ms D knew she had moved the money on from the beneficiary account Santander sent it to.

This means I am not instructing Santander to refund any money to Ms D. This is difficult decision to make, I'm sorry Ms D lost a considerable amount of money which was very distressing for her. I can understand why she would like to be compensated for her losses. And I do accept Ms D has fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find Santander can be held liable in the circumstances of this case.

Both parties responded before the deadline I set. Ms D accepted my provisional decision. Santander said it had no information to add.

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.

As neither party sent in any new information for me to review I have no reason to change the findings or outcome I set out in my provisional decision.

It follows for the reasons set out above I do not find Santander can be held liable for Ms D's losses.

My final decision

I am not upholding Ms D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 26 December 2023.

Rebecca Connelley
Ombudsman