

The complaint

Miss D complains that Santander UK Plc (“Santander”) won’t refund money she lost when she fell victim to an investment scam.

Miss D is being represented by a claims management company in her complaint.

What happened

Miss D became interested in a property development investment opportunity after watching videos of a firm, “L”, on social media. She reached out to a representative, an investment manager, who persuaded her to invest money in a development project overseas. Miss D was recommended to open an e-money account with an electronic money institution (EMI) to facilitate the investment funding. Funds were deposited into that account from her current account with Santander over a number of transactions.

One of the transactions – the second payment – flagged on the bank’s systems and Miss D needed to contact Santander to discuss it. The agent questioned her about the payment, and she confirmed that she was sending money to her own account which she’d recently opened. Miss D also told the agent that no one had been involved in helping her set it up, and she hadn’t been asked to download anything on her device. The payment was released, and subsequent payments to the same account were executed without further questioning.

A further transaction was blocked by Santander when Miss D attempted to send money to an overseas account. The bank phoned her to discuss the nature of this payment, and Miss D confirmed she was investing in a property overseas – the same country where she was sending the money to. The agent asked her what research she’d done and how she found out about the opportunity. They also told Miss D that the bank had seen an increase in scams and wanted to make sure she had done her checks before proceeding. Miss D said she was happy to proceed, and the payment was released. There were two further international payments from Miss D’s account – to the same payee – which were made over the next two days.

Miss D discovered she’d been scammed when she received an account closure notification from the EMI she had recently opened an account with. She reported the scam to that firm as well as Santander. Unhappy with their response, the matter was referred to our service. Miss D’s complaint about the EMI is being considered separately by our service.

Our investigator didn’t uphold Miss D’s concerns as they weren’t persuaded that Santander could have done more to prevent her losses. They were also satisfied that the bank did what it could to try and recover the funds once it became aware of the scam.

Miss D and her representative don’t agree with the investigator’s findings and have asked for an ombudsman’s decision. So, the complaint has been passed to me to decide.

The following transactions, made from Miss D’s Santander account in October 2021, are relevant to this complaint –

Date	Type/Payee	Amount
8 October	Debit card payment to EMI	£5.00
12 October	Faster payment to EMI	£3,000.00
13 October	Faster payment to EMI	£4,200.00 (<i>flagged</i>)
14 October	Faster payment to EMI	£4,200.00
14 October	Faster payment to EMI	£4,200.00
14 October	Faster payment to EMI	£4,200.00
14 October	Faster payment to EMI	£3,999.00
15 October	Faster payment to EMI	£4,200.00
15 October	Faster payment to EMI	£13,500.00
17 October	Credit from EMI (reversal)	£4,200.00 (<i>credit</i>)
17 October	Credit from EMI (reversal)	£13,500.00 (<i>credit</i>)
18 October	International payment	£17,208.65 (plus £25 charge) (<i>flagged</i>)
19 October	International payment	£17,257.97 (plus £25 charge)
20 October	International payment	£14,631.14 (plus £25 charge)
	Scam payments total	£90,676.76
	Credits total	£17,700.00
	Total loss	£72,976.76

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.

This complaint has been awaiting an ombudsman's decision for some time. So firstly, I'm sorry that Miss D and Santander have had to wait this long. Also, I'd like to reassure the parties that although I've only summarised the background to this complaint, I've read and considered everything in its entirety.

Miss D says her dealings were with a representative from L. I've done my own research into L, but very little information is available about it in the public domain. I can see it has been registered in an EU member state since July 2021, although it appears to have recently gone into liquidation. This in and of itself isn't evidence that L was set up with the specific purpose of scamming customers. But Miss D claims that she was scammed, and Santander hasn't disputed this. So, I've proceeded on that basis.

At the outset, it has been difficult to unpick what exactly happened at the time the payments were made. Miss D reported the scam just days after the last payment was made. Although I appreciate that she may have still been trying to piece together what had happened when she reported the matter, gaps remain in what she's since told her representative and our service. Miss D has also given conflicting information about the disputed payments.

For instance, when Santander intervened on 13 October 2021, Miss D confirmed it was her making the payment in question to her own account. During the call, she also confirmed making the previous payment to the same account. Yet around a week later, when she reported the scam to the EMI, Miss D said she hadn't transferred the funds from her Santander account. Later, she acknowledged that she had.

Similarly, when Santander intervened on 18 October 2021, Miss D confirmed the payment was genuine and she answered the agent's questions. But when our investigator phoned her last year and requested further clarification, Miss D told them that although she did authorise the first international payment, she thought it was from her account with the EMI. I've listened to the call recording and can hear the investigator reminding Miss D that it was

Santander who had phoned her at the time to discuss the payment. Miss D can be heard saying, *“no I thought it was my [EMI] account.”*

I do appreciate that the payments were made nearly two years ago. But these differing recollections naturally cast a doubt on the credibility of Miss D’s testimony. In this situation, my role is to weigh up the evidence we do have and decide on the balance of probabilities what’s most likely to have happened. For these reasons, I’ve relied and placed more weight on the documentary evidence available to reach a view on what happened.

The first thing I need to decide is whether, on balance, I think Miss D authorised the disputed payments. Broadly speaking, Miss D is responsible for any payments that she has authorised, and she isn’t responsible for unauthorised payments.

Miss D has already accepted that she authorised the payments to her e-money account with the EMI, as well as the first international payment. Having considered all the evidence and information available, I think, on balance, it’s most likely that she also authorised the remaining international payments. The technical evidence Santander has provided shows that on the day of the relevant payments, online banking access was gained from the same IP address that was used for the earlier payments (which Miss D has confirmed she authorised). This means that Miss D’s account wasn’t accessed from any other location.

Even if Miss D had granted remote access to the scammer at these times, and the suggestion is that the scammer initiated the payments, each transaction was approved using a one-time passcode (OTP) which was sent to Miss D’s registered mobile number. When questioned, she told our investigator that she shared the OTP with the scammer whenever they rang her and asked for it.

Santander has provided a copy of the text containing the OTP which it says it sent at the time. The text reads, *“OTP to MAKE AN INTERNATIONAL PAYMENT of XXXXX.XX to a/c ending XXXX. Call us if this wasn’t you. NEVER share this code, not even with Santander staff.”*

I understand Miss D told her representative that she shared the OTPs with the scammer as she believed it was to verify her investment account. But the above casts doubt on her recollections, seeing as the message she would have needed to read in order to share the OTP made it sufficiently clear that the code was for making a payment. It’s also worth noting that the message warned Miss D not to share the code.

As I’m persuaded that Miss D most likely authorised the disputed transactions, she’s considered liable for the loss – even if she was duped into making the payments – unless there’s evidence that Santander could and should reasonably have done more to protect her against the risk of fraud and scams *and* that this would have made a difference to her decision-making.

Looking at the account history, I find that Santander intervened at the correct point as I don’t think payments 1 and 2 ought to have triggered as being unusual. I’ve listened to the call recording between Santander and Miss D on 13 October 2021, a copy of which has also been shared with her representative. I’ve carefully considered the concerns that have been put forward for why the intervention didn’t go far enough. However, I find that the intervention was sufficient in the circumstances of this case. The agent enquired where the money was going [an account Miss D had recently set up], whether anyone was involved in setting up the beneficiary account [‘no’], and whether she’d been asked to download anything [‘no’].

The conversation that followed was based on Miss D’s answers. It is clear she was very unhappy about being asked all these questions. At one point Miss D is heard saying, “who

are you to tell me where I should send my money?” and “this account pays me no interest”. I’m not suggesting that angry or unhappy customers shouldn’t be properly questioned by the bank. I’m merely highlighting that given Miss D’s state of mind, and her answers to previous questions, I’m not persuaded that further questioning along the lines of what the representative has suggested – why she was sending so much money to her account with an EMI; if she was planning on making international payments, etc. – would have resulted in a different outcome.

During the call, Miss D had already told Santander that she was looking for a bank account for her son when she came across the EMI. And that she decided to apply for herself because she liked the colour of the debit card. We know that this isn’t why Miss D opened an account with the EMI. I’m not convinced that further probing, including questioning her about why she had opened an account with an EMI simply based on the colour of its debit card, would have resulted in her saying anything that might have raised concerns.

It is also worth pointing out that only days later, when the EMI questioned the purpose of two transfers from Miss D’s Santander account into her account with it, she said it was for paying bills and making online payments. I think it’s likely that this is what she would have told Santander had it questioned her further. I think it’s important to note that the EMI does offer those facilities.

Ultimately, the payment was going to an account in Miss D’s name that she confirmed she had set up without anyone else’s involvement. She’d already said it was her decision where to send her money – including sending it abroad, seeing as she mentioned a country’s name. Given that the EMI specialises in international transfers, I don’t think Santander ought to have discussed investment scams in the way the representative has argued.

Overall, I find that the intervention was sufficient and so I’m satisfied Santander acted reasonably. Miss D made four payments to her EMI account the following day. These were released without additional enquiries. Even if Santander had paused some or all of them, I’m not persuaded Miss D’s answers would have been any different from those she’d previously given.

The first international payment triggered an alert on Santander’s fraud detection system and it phoned Miss D to discuss it. Again, I’ve listened to the call recording, and I’ve considered her representative’s comments. I acknowledge that the agent could have questioned Miss D further – it’s easy to be critical with the benefit of hindsight – but I don’t agree that the agent didn’t probe at all. The agent asked whether she had been approached by anyone or had researched the opportunity herself, and Miss D confirmed she had looked it up herself. She also said she was investing with other people, and that they were ‘into buying property and doing it up’.

The agent went on to ask Miss D how she came across this specific opportunity, and whether she’d seen any paperwork or contracts. Miss D confirmed that she had. The agent explained that all banks had seen an increase in scams, and they wanted to make sure the opportunity was legitimate, and that Miss D had done her checks before she was sending the money. She was asked again if the company had given her paperwork and Miss D confirmed that she had. I find that the call served the purpose of identifying a fraud risk, providing a sufficient scam warning, and checking that Miss D had carried out sufficient due diligence.

The representative submits that Santander didn’t ask for the name of the investment company to check if it was a regulated investment. But the beneficiary’s name was the investment company itself – L – and Miss D also confirmed it again during the call. And, as far as I can tell, it wasn’t an investment company in the literal sense; L was a property

development / construction company. So, I'm unsure about the relevance of checking whether the investment was regulated. It's unclear whether the agent researched the company before or during their call with Miss D. But in any event, if a check has been carried out, L would have come up on the EU member state's company register – indicating that it had been properly registered with the local authorities.

Miss D's representative also submits that Santander asked for the details of the investment and Miss D said she didn't have any details other than it was a property in a certain country. They argue that the bank should have seen this as a huge red flag as Miss D should have been able to explain key details, such as the name of the investment firm, the location, price, and the configuration of the property.

That isn't what happened during the call. After questioning her about the transaction, Santander had asked to go over the payment details and Miss D said she didn't have them at the time. That is why the agent went on to explain that normally the bank would want to double check the details before processing the payment. But that the payment in question could be released if Miss D was happy with the details she'd entered online when she authorised it.

There's no suggestion that Miss D wouldn't have been able to answer what her representative has referred to as key details had Santander questioned her further. In fact, as I've already mentioned, during the call she did confirm she wanted to pay L. It might be that I've misunderstood Miss D's representative, and what they're saying is that she's since told them she wouldn't have been able to provide the information had she been asked at that time. But Miss D's recollections have already been called into question. If, as claimed during the call, she was into buying property and doing it up, and she'd actively sought this opportunity, it seems unlikely that she wouldn't have received some information from L (like a brochure or a sales prospectus) at the very least which would have enabled her to provide that information.

Overall, I'm not persuaded that further questioning at the time of the international payment would have led to a different decision-making on Miss D's part. The next two payments went to the same payee. Given that Santander had already made enquiries about the nature of the previous payment to that payee, I don't think the bank acted unreasonably by not contacting Miss D again when she authorised the subsequent payments. That means, I can't fairly hold Santander liable for Miss D's loss.

I've also thought about whether Santander could have done more to recover the funds after it became aware of the situation, as in some circumstances the money can be recovered. In relation to the payments to Miss D's account with the EMI, we know funds had already been transferred out by the time the scam was reported. So, a recall request wouldn't have been successful. As for the international payments, I can see Santander sent a recall request to the beneficiary bank. But it was told funds couldn't be recovered unless the beneficiary consented, or the request came from a local authority. Under the circumstances, I don't think Santander could have done anything more to recover Miss D's funds.

I recognise that Miss D will be very disappointed with this outcome. Not least because the matter has been ongoing for some time. I recognise that there's a lot of money involved here. But having considered the available information, for the reasons given, it wouldn't be fair of me to hold Santander responsible for her loss.

My final decision

For the reasons given, 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 D to accept or reject my decision before 14 September 2023.

Gagandeep Singh
Ombudsman