

The complaint

Miss U complains that Santander UK Plc (“Santander”) won’t refund over £29,000 she lost to an investment scam beginning in September 2021.

The details of this complaint are well known to both parties, so I won’t repeat everything again here. Instead, I will focus on giving the reasons for my decision.

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 agree with the conclusions reached by the investigator and have decided not to uphold it for the following reasons:

- It isn’t in dispute that Miss U authorised the disputed payments she made to her crypto wallet/Wise account from her Santander account (where her funds were subsequently transferred on to the scammer “7XFX” from her crypto wallet). The payments were requested using her legitimate security credentials provided by Santander, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.
- However, I’ve considered whether Santander should have done more to prevent Miss U from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.
- It’s common ground that some of the payments Miss U made were unusual given that they did trigger Santander’s fraud prevention systems and were automatically blocked pending further enquiry – such as the £3,100 payment she made on 28 September 2021 to her Ibinex wallet. Accordingly, it’s just a question of whether the bank went far enough in all the circumstances with its intervention.
- When Santander spoke to Miss U, it said it provided a full and relevant warning, but unfortunately it hasn’t been able to provide a copy of the call recording to show what questions were asked or what warnings were given. However, Miss U has been able to provide her recollections of what happened on the call. She says she told Santander that she was paying money to her trading company 7XFX, and that she was warned that trading in cryptocurrency was highly volatile. She said she understood this, and that Santander advised her that she might be being scammed, at which point it read her a fraud script.
- Given the call recording is no longer available, I can’t be sure that Santander’s intervention went far enough. But even accepting this as the case, based on the evidence available (including Miss U’s recollections and Santander’s call notes) I’m not persuaded any further questioning or scam warning would have ultimately uncovered the scam and prevented the loss in any event. I’ll explain why.

- Miss U says that Santander made her aware of the risks of cryptocurrency and that she might be being scammed, but continued with the payment regardless. Miss U also says she told Santander that the broker was reputable and that she had already researched them. I appreciate that an FCA warning has since been published about 7XFX. But this wasn't published until *after* Santander intervened, and I can't see that there was any other adverse information online about the broker at the relevant time. Miss U said she had already researched the broker and had only seen positive testimonials, which convinced her they were legitimate.
- As a result, if Santander had asked to her carry out further research, or to check the FCA warning list for example, I'm not persuaded she would've found anything that would've likely led her to believe she was being scammed. Indeed, she had already carried out her own research and didn't find anything negative. Santander's notes show that it warned her the Confirmation of Payee (CoP) did not match. It also strongly advised her not to proceed if she was being advised by a third party. But despite being aware of these risks, she still proceeded with the payment.
- Further, I note that Miss U said she spoke to Santander again when making the final scam payment of £8,500 on 5 November 2021. At this point, Miss U told the bank that the payment was for cosmetic surgery, as this is what the scammer had told her to say. So, even if Santander should've intervened on any further occasions, it seems unlikely that it would've received upfront and honest answers about the nature of the payments, given she was being coached in what to say by the scammer.
- Therefore, even if Santander *could* have carried out further checks and asked more probing questions, I'm not persuaded this would have likely revealed Miss U was falling for a scam or ultimately prevented her loss. Therefore, I don't think its failure to look more closely into the payments can be considered the proximate cause of Miss U's loss in these circumstances, as it seems likely she would have continued to make the payments notwithstanding any intervention. As such, I don't consider it would be fair and reasonable to hold Santander liable for failing to prevent the scam.
- Despite this, Santander has nonetheless accepted liability for the payment of £1,020 made on 24 September 2021, as it said it failed to intervene and provide an effective scam warning. However, it said it would only refund 50% of this payment on the basis of Miss U's contributory negligence. Given I'm not persuaded an intervention would have likely prevented the scam in this case, I don't think Santander needs to offer anything over and above what it has already paid Miss U.
- Santander is also under no obligation to refund the money to Miss U under the Contingent Reimbursement Model (CRM) Code either, as the Code only applies to transfers made to another person. In this instance, the faster payments were made to her own accounts, so the CRM Code would not apply to these transactions.

I appreciate this will likely come as a disappointment to Miss U, and I'm sorry to hear she has been the victim of a cruel scam. However, in the circumstances, I do not consider it would be fair and reasonable to hold Santander liable for her loss.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss U to accept or reject my decision before 15 November 2023.

Jack Ferris
Ombudsman