

## **The complaint**

Miss N has complained Santander UK plc won't refund money she lost from her account after being the victim of an investment scam.

## **What happened**

In 2020 Miss N took the decision to carry out some further cryptocurrency investment. She found a company who were willing to offer her advice. This included setting up a wallet overseas. Over a four-month period in late 2020, Miss N sent £23,710 from her Santander account to this wallet.

Miss N had already invested in cryptocurrency previously so considered herself reasonably savvy. So she was extremely upset and emotionally set back when she discovered this had been a scam and she could no longer access her funds.

In 2023 Miss N complained to Santander that they'd done little to protect her from this scam. Santander didn't believe they should refund her as they felt every payment she'd made would have meant she could have seen an appropriate warning.

As Miss N felt the fact she was making overseas payments should have alerted Santander, she brought her complaint to the ombudsman service.

Our investigator felt it was difficult to see what loss Miss N had undergone. He noted more than £26,500 worth of credits had been received by Miss N from a similar type of wallet as the one she was complaining about. Miss N was unable to demonstrate what credits those payments related to. He didn't believe it would be fair to ask Santander to refund Miss N.

Still dissatisfied, Miss N asked an ombudsman to consider her complaint.

## **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 outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

I don't dispute Miss N was scammed and has lost a considerable amount of. She has my sympathy about what she has gone through.

Miss N made and authorised the payments. Miss N believed she was making financial investments in cryptocurrency.

I'm satisfied those transactions were authorised under the Payment Services Regulations 2017 (PSRs).

It's also accepted that Santander has an obligation to follow Miss N's instructions. So in the first instance Miss N is presumed liable for her loss. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider 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.
- 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 (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, have 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.

Miss N fell victim to an investment scam. These unfortunately aren't particularly unusual and are invidious in the way those carrying out the scam inveigle themselves into someone's trust.

It is clear from the testimony I've seen from Miss N that she firmly believed she was making genuine investments. Miss N has been unable to provide us with any evidence of conversations or emails between herself and the scammers. Despite further questions she's also not been able to identify the payments she made to her own wallet which resulted in the credits received into her Santander account.

Santander has confirmed they do have mechanisms in place to check unusual transactions. However these transactions didn't register as specifically unusual.

If as Miss N has told us, she'd invested in cryptocurrency previously, and I can see the credits into her Santander account, I don't think there's any likelihood that those initial payments must also have been made from her Santander account.

This means, I believe, that Miss N's usual pattern of payments included payments to an overseas wallet. So Santander wouldn't have intervened and issued additional warnings as she was making those payments.

However Miss N used her mobile app to make these payments. At the time she made each payment, Miss N would have been asked what kind of payment she was making. Santander's records show Miss N confirmed she was making payments to her own account (rather than say she was making an investment). This resulted in Miss N being presented with warnings about safe account scams before then confirming she wished the payments to proceed. I can see why Miss N ignored these as she felt these warnings weren't relevant to her circumstances, but I rather think that even if she'd chosen the investment option and received a warning about investment scams, she'd still have proceeded.

I can see from the limited evidence Miss N presented to us that she emailed the scammers later on about her tax position. This suggests to me that even at this stage, she was convinced she was involved in something genuine.

This means that whatever further actions Santander may have taken would have meant Miss N ignoring them.

Overall I think there's enough evidence to suggest Santander took the appropriate steps to probe what was going on here. Whilst a bank is always in a better place than an individual customer to appreciate the complexity of scams, as stated earlier, it is also accepted a bank's required to follow its customer's instruction.

I have considered, in the light of Santander's knowledge, whether they should have stopped Miss N from making payments at all. But I don't believe they acted improperly here.

I would also confirm that I note Miss N has argued that the large value of credits she received related to other investments. I've taken what she's said at face value despite her being unable to provide further evidence of the money she paid out.

Overall I can't fairly tell Santander to refund Miss N's money.

### **My final decision**

For the reasons given, my final decision is not to uphold Miss N's complaint against Santander UK plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 3 November 2023.

Sandra Quinn  
**Ombudsman**