

The complaint

Miss M 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

In April 2022, Miss M was approached by someone through the social network Telegram with an offer for earning extra money by completing 'missions'.

She was persuaded to part with money by purchasing cryptocurrency in order to fund her 'account' and complete the missions.

In total, Miss M paid a total of £1,797.11 from her Santander account.

However, Miss M then realised it was a scam when the person who contacted her began to apply pressure for Miss M to pay more and more money, eventually blackmailing her.

Miss M complained to Santander, but it didn't uphold her complaint.

Unhappy, she brought her complaint to this Service. Our Investigator considered things but didn't think that the complaint should be upheld.

Miss M asked for an Ombudsman to consider the complaint, so it has been passed to me to make a final 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've decided not to uphold Miss M's complaint for broadly the same reasons as our Investigator. I know that this will be disappointing for Miss M, so I'll explain why.

It isn't in dispute here that Miss M has been the victim of a scam – the actions of the individual that contacted her are not those of a reputable company, and I know that this has been a highly distressing incident for Miss M, and I am very sorry to hear what she has been through.

Did Miss M authorise the payments?

In line with the Payment Services Regulations 2017 (PSRs), Miss M isn't liable for payments she didn't authorise, unless she failed with gross negligence or intent to comply with the terms of the account or keep her personalised security details safe. Accordingly, I've considered whether Miss M authorised the payments in question here.

Having done so, I'm satisfied that Miss M did authorise the payments in question here. They were made by her using her debit card and Apple Pay. I understand that Miss M had been tricked by the scammer into instructing Santander to make the payments – but while Miss M never intended the payments to go to the scammer, this doesn't change the fact that she authorised them and is therefore presumed liable for the loss in the first instance.

Recovery of the payments Miss M made

After the payments were made, I wouldn't reasonably expect Santander to do anything further until it had been notified there was a scam.

The only recourse for potential recovery of the funds for the payments would be via the chargeback scheme. Chargeback is a process by which disputes are resolved between card issuers (here, Santander) and the merchant (here, C).

However, a chargeback in these circumstances would likely never have been successful. This is because C is a legitimate crypto exchange and provided the services that Miss M had requested of it – the purchase of crypto. The subsequent transfer of the crypto to a wallet of Miss M's choosing is therefore a separate matter – and so I don't think that these payments were recoverable once they had been made.

Should Santander have reasonably prevented the payments in the first place?

I can only uphold this complaint if I think that Santander reasonably ought to have prevented some or all of the payments Miss M made in the first place – therefore preventing the loss before it happened.

Miss M authorised the scam payments in question here – so as I've explained above, she is presumed liable for the loss in the first instance.

That said, as a matter of good industry practice, Santander should 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 into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Santander should fairly and reasonably:

- Been monitoring accounts – including payments made and 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 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 banks are generally more familiar with than the average customer; and
- 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 customers from the possibility of financial harm from fraud.

So, I've carefully considered what this means for Miss M and the payments in question here.

Miss M made a total of six payments from her Santander account as part of the scam – however, the individual transactions were not particularly large – and they would not have stood out to Santander as unusual or uncharacteristic when considering Miss M’s normal account activity. And while I understand that the payments were going to a crypto exchange, not all such payments are as a result of a scam.

So, I am not persuaded that Santander should have been triggered into taking any action or been obliged to contact Miss M before processing the payments. And I’m satisfied that it didn’t miss an opportunity to prevent the payments from being made.

I do have a great deal of sympathy for the situation Miss M finds herself in – she has lost money from her Santander account, and I know that she continued to pay more money from elsewhere too. It has obviously been very distressing for her.

However, the loss that he has suffered is ultimately caused by the scammers themselves – not Santander. And I can’t ask Santander to refund this loss to Miss M when I don’t think that 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 Miss M to accept or reject my decision before 10 August 2023.

Claire Pugh
Ombudsman