

The complaint

Mrs C complains that Santander UK Plc didn't do enough to protect her when she was the victim of a crypto investment scam.

Mrs C is being supported by a representative, but for ease, I'll refer to Mrs C throughout this decision.

What happened

The background to this complaint is well known to both parties, and so I'll only refer to some key events here.

Mrs C said she made an online enquiry, in July 2022, with a company (who I'll refer to here as 'I') about investing in crypto. She'd seen an advert endorsed by Martin Lewis and said this gave her reassurance the investment was genuine.

Mrs C said she was impressed with the professional appearance of 'I's website. She said she allowed remote access software to be installed on her device – having been led to believe this was to enable her to set up a trading account.

On 2 August 2022 Mrs C made a payment of £100 from her Santander account to a legitimate crypto exchange platform in her name (who I'll refer to as 'B'). The payment was made via 'B's payment processing company ('S'). Mrs C said she could see the £100 appear on her trading platform.

Mrs C said she was then contacted by another company (who I'll refer to as 'W') – and introduced to who she was told would be her account manager. Mrs C said she was under the impression 'I' and 'W' were part of the same organisation and any questions she asked of her 'account manager' were quickly responded to in a professional and informative way.

On 3 August 2022 Mrs C received a return on the investment of £120. She then transferred £10,000 from her Santander account to her account with 'B' via 'S'. Santander blocked this payment and spoke to Mrs C. Happy with her responses, the payment was released.

On 9 August 2022 Mrs C transferred two payments to 'B' via 'S'. The first was for £24,500 and the second was for £9,950. These payments were largely funded by loans. Neither payment was blocked by Santander.

On 10 and 11 August 2022 Mrs C attempted to make several more payments to her account with 'B' via 'S'. These were all declined by Santander and it blocked Mrs C's account given concerns it had that she was potentially the victim of a scam. Mrs C had further communication with Santander over the next few weeks – both over the telephone and in branch. She wanted the blocks on her account removed so she could make further payments towards the investment.

On 6 September 2022 Santander invoked the banking protocol after which Mrs C raised a fraud claim.

Santander thought it had done enough to protect Mrs C and, as she'd authorised payments to an account in her own name ('B'), it said it wasn't responsible for her loss. Santander added that it had provided extensive warnings to Mrs C during several conversations with

her, but that she'd provided misleading answers to enable the payments to be processed. And that it was only once the banking protocol was invoked that Mrs C accepted she'd been the victim of a scam.

Unhappy with Santander's response, Mrs C referred her complaint to the Financial Ombudsman. She didn't think Santander had done enough to protect her – particularly given the size of the payments. She said she wasn't asked probing enough questions by Santander when it spoke to her on 3 August 2022 and that it had obvious concerns, yet still let the payments be processed.

One of our Investigators considered the complaint but didn't uphold it. He believed Santander acted reasonably in trying to protect Mrs C. And so, he didn't find Santander responsible for Mrs C's loss.

Mrs C didn't agree and asked for an Ombudsman to issue a final decision. She said Santander's questioning didn't go far enough during the 3 August 2022 telephone call and it should've acted on the information she gave and invoked the banking protocol at that point.

Mrs C suggested that the liability for her loss be split equally between her and Santander.

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 this complaint, for largely the same reasons as our Investigator. I know this is not the answer Mrs C was hoping for and so this will come as a disappointment.

I'm really sorry to hear Mrs C's been the victim of a scam and has lost money as a result. I can understand why she'd want to do all she can to recover the money she lost. But I need to decide whether Santander can fairly and reasonably be held responsible for Mrs C's loss. Overall, I've decided that it can't be. I'll explain why.

I should first point out that Santander had an obligation to protect Mrs C from financial harm, irrespective of what happened to the money after it left her Santander account. And so, I'm considering Mrs C's complaint about Santander on that basis.

I accept the transactions Mrs C made were authorised payments, even though she was the victim of a sophisticated crypto investment scam. So, although she didn't intend the money to go to the scammers, under the Payment Services Regulations 2017 and the terms and conditions of his account, Mrs C is presumed liable for the loss in the first instance.

However, taking into account what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or 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 that its customers were at risk of fraud (among 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 customers from the possibility of financial harm from fraud.

So, taking all of this into account, I need to decide if Santander acted fairly and reasonably in its dealings with Mrs C when she made the payments, specifically whether it should've done more than it did before processing the payments – and if it had, would that have made a difference.

Where there is interaction between a bank and its customer in relation to a payment, we'd expect the bank to take this opportunity to find out more about the nature of that payment.

With that in mind, I've considered very carefully the interaction Santander had with Mrs C about the £10,000 payment made on 3 August 2022. And for context, I've also thought about the further interactions she had *after* those payments were made, up to the point the banking protocol was invoked, and the scam was uncovered. I've also considered some of the wider circumstances surrounding the scam.

During the 3 August 2022 telephone call Mrs C confirmed she'd set up the account with 'B' and that she was buying Bitcoin. Mrs C also told Santander that the £100 she'd paid on 2 August 2022 was showing in her account with 'B'. And that she had full access to that account – having recently successfully withdrawn £120.

Santander asked Mrs C on two occasions if there was any broker or other third party involved. Mrs C said '*no*' and '*I know what I'm doing*'. She said she understood how crypto investments worked and had done her research and was '*confident with it*'.

Santander also asked Mrs C if anyone had to set up accounts for her by taking over her devices – to which she replied, '*no*'. And she said she didn't think £10,000 was too high for a first deposit, nor had she been promised high returns that looked too good to be true.

I've thought carefully about whether Santander asked the right questions during its interaction with Mrs C on 3 August 2022 to fully understand the nature of the transaction she was trying to make. And I do think it did enough.

Firstly, I accept that at times Santander spoke in more general terms about the risks related to crypto investment scams – but some of that did apply to Mrs C. In particular, whether a third party was involved, and accounts being set up (or helped to be set up) by the scammer. But despite Santander's clear warnings to Mrs C about the risks involved in crypto investments – she didn't divulge the origin of the investment, who was advising her (including the fact she had an 'account manager'), or that remote access software had been used. So, Santander had no reason to delve further on those points.

Secondly, there was no obvious concerning pattern of payments at this point. Santander did ask Mrs C whether she was conformable making an initial investment of £10,000 – to which she said she was. I don't think Santander would've had reason at that time to suspect Mrs C was looking to make more large payments (a clear hallmark of an investment scam), as she made no suggestion in her responses to Santander this was to be the case.

Thirdly, Mrs C sounded confident in the telephone call – not hesitating before she answered the questions and maintaining she knew what she was doing. And so, I can't say Santander acted unreasonably by not challenging what it was being told by Mrs C in

response to the questions it was asking. Nor did it have a reasonable basis to believe Mrs C was being coached on what to say by a scammer. And so, I think the 3 August 2022 telephone call went far enough in the circumstances.

Arguably, Santander should've intervened in the next two payments made by Mrs C on 9 August 2022 (£24,500 and £9,950). And I've thought about whether any more probing by Santander at the time of those payments would've made a difference. As I go on to explain, I don't think it would've.

I can tell from the conversation between Mrs C and Santander on 3 August 2022 that she was completely caught up in the scam – so much so that she was prepared to provide inaccurate information to ensure the payment was processed.

As I've said above, she spoke with confidence during that telephone call about what she was doing and was clearly very keen for the payment to be processed without further delay. I therefore think it likely, on balance, Mrs C would've maintained that air of confidence and continued to provide inaccurate information to Santander if it had spoken to her in relation to the 9 August 2022 payments.

My thoughts here are further reinforced when considering what happened when Mrs C tried to make further payments on 10 and 11 August 2022 – and the interactions she had with Santander.

Mrs C spoke to Santander on 10 August 2022 when it explicitly told her it thought she was falling victim to a scam. Yet Mrs C maintained she knew what she was doing and that there was no third-party involvement. And she expressed some annoyance that her payments were being blocked, reassuring Santander she was able to make withdrawals on the investment.

During further interactions between Mrs C and Santander, concerns were raised about the loans she'd taken out and how many banks, including Santander, didn't support payments direct to 'B' over concerns relating to crypto investment scams, and that 'B' wasn't regulated by the Financial Conduct Authority (FCA). Yet Mrs C maintained she knew what she was doing.

Mrs C did divulge the fact she'd been enticed into investing because it was endorsed by Martin Lewis – at which point Santander clearly told her that this was a red flag. Yet Mrs C maintained the legitimacy of the investment. She said she'd enough funds to cover any money lost through the investment and pay back the loans. And she empathised, on more than one occasion, that there was no third party involved. Mrs C also contacted Santander on several occasions to chase the block on her account being removed so she could make the payments towards the investment.

This prolonged interaction between Mrs C and Santander gave Mrs C time to reflect on the clear warnings Santander were giving – and the accuracy and significance of the answers she was providing. But she continued to provide misleading information. Mrs C was also strongly advised by Santander to check the FCA register. If she had, she would've seen an FCA warning about 'W' posted on 8 August 2022.

Mrs C also transferred £35,000 as part of the investment from an account she held with another business. That transfer was made towards the end of August 2022 – whilst her account with Santander was blocked due to the serious concerns it had that Mrs C was the victim of a scam. This further demonstrates how convinced Mrs C was that the investment was genuine.

Even when Mrs C attended branch on 6 September 2022, she still seemed convinced the investment wasn't a scam – and it's only at the point the banking protocol was invoked that she realised the true extent of the unfortunate situation she'd found herself in.

Taking everything into account, I don't disagree that Mrs C has been the victim of a sophisticated crypto investment scam. But I think Santander did enough to try and protect her, and I don't think any further reasonable action from Santander during the 3 August 2022 telephone call – or in relation to the 9 August 2022 payments - would likely have made a difference. Furthermore, Santander's actions post the disputed transactions prevented Mrs C from losing even more money as part of the scam.

With all that in mind, I don't think it's fair or reasonable to hold Santander accountable for Mrs C's loss.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision **before 24 October 2023**.

Anna Jackson
Ombudsman