

The complaint

Mrs W complains that Santander UK Plc won't refund the money she lost to an investment scam.

Mrs W is represented by a third party but for ease of reading, I'll refer to all submissions as having come from her alone.

What happened

Mrs W came across an online advert for an investment opportunity with a company I'll call 'G' that appeared to be endorsed by a well-known celebrity. She filled out an online enquiry form and was soon contacted by a representative of G. Around August 2022, after seeing positive reviews about G, Mrs W decided to invest.

Mrs W used an existing cryptocurrency exchange account with a company I'll call 'C' to send faster payments to from her Santander account. From there, she bought crypto and sent it onto the scammer. Mrs W was encouraged to deposit more money to receive higher profits. Mrs W transferred a total of £17,591 over six payments between 5 August 2022 and 24 August 2022. Mrs W received profits of £400 back to her account with C. Around 19 August 2022, Mrs W tried to withdraw her funds from the investment with G and close the account. G's representative subsequently stopped communicating with her. Mrs W contacted Santander to tell it about what happened on 28 May 2023.

I've included a table of the disputed transactions below:

Transaction number	Date	Method of payment	Payee	Amount (£)	Running total
1	5 August 2022	Faster Payment	Mrs W's C account	£1,787	£1,787
2	9 August 2022	Faster Payment	Mrs W's C account	£2,500	£4,287
3	15 August 2022	Faster Payment	Mrs W's C account	£2,700	£6,987
4	17 August 2022	Faster Payment	Mrs W's C account	£5,000	£11,987
5	22 August 2022	Faster Payment	Mrs W's C account	£1,594	£13,581
6	24 August 2022	Faster Payment	Mrs W's C account	£4,000	£17,581

Santander responded on 18 June 2023 stating that it wouldn't reimburse Mrs W's loss. It said the payments were sent to an existing payee. It also said it tried to recover Mrs W's payments from C but it said the funds had been moved out of the account and no funds remained.

One of our Investigators looked into things, she didn't feel the payments were unusual enough for Santander to have intervened based on her previous account activity. Mrs W didn't agree, she said in summary that; had Santander intervened at the beginning of the

scam, it could have unravelled the scam and prevented the loss. She also said Santander's in-app authorisation was ineffective and given her ill health and vulnerability, the transactions should have been deemed unusual.

The complaint has therefore been passed to me for determination.

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 don't uphold this complaint but before I explain why, I want to make it clear that I believe Mrs W was the victim of a cruel scam and she is not to blame for falling victim to this, the scammers are. But being the victim of a scam, doesn't automatically entitle Mrs W to a refund.

I've recognised Mrs W's comments on her ill health and vulnerability and I'm very sorry to read about her personal circumstances. But I've not seen any evidence that would suggest Santander were aware or could have known about her personal circumstances prior to the disputed payments being made. And so, I don't think it was aware of Mrs W's vulnerability at the time of any of her payments to have treated her account any differently.

Banks and other Payment Services Providers ("PSPs") have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering. But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice.

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 be involved in every transaction.

All of the payments were sent to an existing account in Mrs W's name. It was from that account that she purchased crypto and sent the crypto to the scam wallet, so I've factored this into my decision.

I don't think I can fairly say that any of the payments when taken individually or collectively were so unusual or uncharacteristic for Mrs W's account such that Santander would reasonably have suspected a fraud or scam was taking place. They were in keeping with Mrs W's normal account activity when considering her previous account spend.

I say this because it wasn't uncommon for Mrs W to transfer money into her Santander account before sending a faster payment out. For example, on 10 January 2022, she transferred £651 into her Santander account and a faster payment was sent out on the same day. On 11 January 2022 she transferred £700 into her Santander account and on the same day she sent a faster payment of the same amount out to an external account. On 18 March 2022, she transferred £1,160 to her Santander account and sent £1,160 to an existing external account on the same day. On 1 August 2022, she transferred £1,244 into her Santander account and sent a faster payment out of the same amount on the same day.

Mrs W also made larger payments to existing payees for example £2,203.01 on 24 January 2022, £2,000 on 27 July 2022, £1,9651.53 on 2 August 2022 and £2,971.62 on 22 August 2022.

Prior to each of the disputed payments, Mrs W transferred funds she needed into her Santander account before sending each of the disputed payments out (either the same day or within a couple of days of the funds being credited to the account). Therefore, the pattern of the spend matched her normal patterns of spend (as referenced above).

I recognise transactions 4 and 6 were larger sums than Mrs W had previously spent, I also note that the payments were going to a crypto exchange and there has been an increase in cryptocurrency fraud in the recent years. But I can't ignore that the payments were sent to an existing beneficiary Mrs W had set up and paid several months prior to the scam taking place. And I think Santander would have reasonably known this was an existing beneficiary when the payments were sent. I've seen that Mrs W had to carry out in-app authorisation checks for some of the payments. But I think these were proportionate to the risk identified by Santander – which was wanting to ensure it was Mrs W that was making the payments herself. I don't think Santander ought to have reasonably suspected that Mrs W could be falling victim to a scam just because some of the payments were larger than usual and were being sent to a known crypto exchange. This is because from time-to-time customers can pay larger amounts from their accounts and not all crypto transactions are sent as the result of a scam.

I've further noted that the payments were not all made on the same day or on consecutive days (which can be indicative of fraud or a scam). They were made a couple of days or several days apart.

And so, taking all of this into account, I don't think Santander missed an opportunity to prevent Mrs W's loss.

Recovery

I've thought about whether Santander did what it ought to have done, when trying to recover the funds for Mrs W.

Mrs W transferred funds to an account in her name. From there, she purchased crypto and moved it onto a wallet address of her choosing (albeit upon the scammers instructions). Santander tried to recover the funds from C and it confirmed the funds had been moved on.

I can't say that Santander could have done anymore to recover the funds Mrs W lost. The account she paid was in her own name and if any funds remained, they would have been accessible to Mrs W.

My final decision

My final decision is, despite my natural sympathies for Mrs W's loss, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 12 December 2023.

Dolores Njemanze
Ombudsman