

The complaint

Mrs C is unhappy that Santander UK Plc won't reimburse her for money she lost as a result of a scam.

What happened

On 13 November 2023, I issued my provisional decision on this complaint. I wanted to give both parties a chance to respond before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

In July 2022, Mrs C came across an advert on a well-known social media platform. The advert suggested that a prominent financial journalist and broadcaster had been successfully trading in cryptocurrency and was offering advice about how other people could do the same. Mrs C clicked on the advert and provided her contact details by filling out a form.

The following day Mrs C was contacted by someone claiming to be a cryptocurrency broker. Unfortunately for Mrs C, the person who contacted her was actually a fraudster. They suggested that she should invest a small sum into cryptocurrency and, if that went well, she could use her profits to carry on investing.

Mrs C agreed to invest. She transferred an initial small payment to the account of a third party on 21 July 2022. Mrs C says she was able to see her 'deposit' on a trading platform provided by the fraudsters. Her investment appeared to be doing well and she was able to 'withdraw' her initial deposit of £215 back to her account within a week.

Mrs C was then advised to open an account with, and transfer her money to, an FCA-authorised Electronic Money Institution ("EMI") – "W".

Mrs C opened an account with W and between 19 August 2022 and 7 October 2022 she made 8 payments totalling £41,200 from her Santander current account to her e-money account with W.

From there she either used her W payment card to purchase cryptocurrency from a legitimate cryptocurrency provider ("B"), which she then passed on to the fraudsters, or she sent payments directly to third parties from her account at W. It's not clear whether the third parties were connected to the fraudsters or were individuals selling cryptocurrency. Mrs C says the fraudsters helped her make the payments, but she controlled the account at W.

Mrs C initially made two bank transfers from her Santander account to her account at W – £1,000 and £4,000 – on 19 August 2022.

When Mrs C made the first payment of £1,000 to what was a new payee, Santander asked her the payment reason. Mrs C selected 'transfer to own account'. She was also given a scam warning, which said:

"Could this be a scam? If someone's contacted you, even saying they're Santander or the police, and said your account's at risk and you need to transfer your money to

a 'safe account', or a new account in your name, this is a known scam. If this has happened to you, please cancel this payment now and call us immediately."

Mrs C then bought £5,000 of cryptocurrency from B and passed that on to the fraudster. Mrs C says that she was able to monitor the performance of her investments on the trading platform and, as claimed, her investment grew significantly.

On or around 28 September 2022, Mrs C contacted the fraudsters and asked whether she could withdraw some of her profits. At this point she says she was told she'd need to pay £5,700 to release her investment and a further £500 to 'process her Bitcoin'.

Mrs C says she did not find this particularly concerning, her understanding was that the growth in her investment would comfortably cover the fees due. So Mrs C transferred the money from her Santander account and from there she purchased £6,000 of Bitcoin and passed that to the fraudsters to cover the fees. It's unclear why Bitcoin to the value of £6,000 rather than £6,200 (the amount she transferred to her account at W) was purchased.

A day later, the fraudsters told Mrs C that, to release her profits, she would need to pay 'an upfront tax fee of £15,000 to comply with tax evasion laws'. Mrs C transferred £15,000 from her Santander account to her account with W. With that she bought £10,000 of cryptocurrency (presumably Bitcoin) by card which she passed to the fraudsters. She also transferred £5,000 to a third party directly.

Later that day, after she'd sent the money to the fraudsters, Mrs C was told that she'd also need to pay an 8% 'processing fee'. The fraudsters said that someone from B would call to confirm this fee. Mrs C spoke to someone claiming to be from B and they explained that most of the fees had, in fact, been paid to B, rather than to her broker. Mrs C transferred the money from her Santander account to W and from there to a third party by transfer.

I note that an 8% processing fee of £8,000 would require Mrs C's initial investments (totalling £5,215) to be worth at least £100,000 on 29 September 2022. Mrs C, on the other hand, believed her investment, at its most valuable, to be worth around £76,000.

The following day, on 30th September 2022, Mrs C received another call from her broker. This time she was told she'd need to pay a further £3,200 because the value of her investment had increased since the point she'd first requested a withdrawal on 28 September 2022.

Mrs C says that increase appeared to be confirmed by what she could see on the trading platform she had access to. So, she agreed to make the payment – this time by purchasing and transferring cryptocurrency.

On 7 October 2022 the fraudsters instructed Mrs C to make further payments - £3,800 and £12,400 for processing fees. It's not clear why the fraudsters waited a week to make these further demands. Mrs C says she was assured that these were the final fees and she says she received an email seemingly from B, confirming that.

Mrs C made a £3,800 payment to W and from there, she used her card to purchase cryptocurrency of a similar value, on 7 October 2022. But when, on 10 October 2022, she attempted to make the final payment of £12,400, Santander flagged the payment for a security check and asked Mrs C to contact it. Mrs C called Santander and, during that call, explained that she was trying to make a payment to release her Bitcoin. Santander was able to deduce that she'd been the victim of a scam. It asked her to attend a branch with identification.

This table shows the transactions Mrs C made, or attempted to make, from her Santander current account:

Date	Time	Amount	Recipient
21 July 2022	N/A	£215	Unknown third party
28 July 2022	N/A	£215 credit	Credit
19 August 2022	17:00	£1,000	W
19 August 2022	17:55	£4,000	W
28 September 2022	18:10	£5,700	W
28 September 2022	18:27	£500	W
29 September 2022	10:20	£15,000	W
29 September 2022	16:42	£8,000	W
30 September 2022	12:36	£3,200	W
7 October 2022	N/A	£3,800	W
10 October 2022	N/A	£12,400*	Not completed

*Mrs C's representatives suggest this payment was for £12,300 and was attempted on 7 October 2022, but Santander's records aren't consistent with that claim. For ease, and as it has no impact on the outcome of the complaint, I've referred to the payment as being attempted on 10 October 2022 in the rest of this decision.

This table shows the payments Mrs C made from her e-money account with W:

Date	Amount	Type of transaction	Recipient
19 August 2022	£5,000	Card purchase	B
28 September 2022	£6,000	Card purchase	B
29 September 2022	£10,000	Card purchase	B
29 September 2022	£5,100	Transfer	Unknown third party (1)
29 September 2022	£8,000	Transfer	Unknown third party (2)
30 September 2022	£2,250	Card purchase	B
30 September 2022	£1,020	Card purchase	B
7 October 2022	£3,830	Card purchase	B

Mrs C asked Santander to consider reimbursing her. She explained that, at the time she made the payments, she'd recently become the main carer for her brother, who lacks mental capacity and part of the reason for investing was to pay for an operation he needed.

Santander considered Mrs C's claim. Among other things, it said (correctly) that the Lending Standards Board's Contingent Reimbursement Model "CRM Code" (which might have otherwise required Santander to reimburse her losses) did not apply to the payments from Mrs C's Santander account because they weren't made to 'another person' as the CRM Code requires. It suggested she contact W.

Mrs C referred the matter to our service. Her complaint was considered by one of our Investigators. They thought Santander ought to have found the £15,000 payment Mrs C made to her W account on 29 September 2022 to be suspicious given the payments already made and it should have made further enquiries before making the payment. If Santander had made further enquiries the scam would have come to light and Mrs C would not have incurred the losses she incurred from 29 September 2022 as a result of the scam.

The Investigator didn't think that there should be any deduction from the amount awarded to Mrs C as they didn't think there was any reason for her to believe she was being scammed.

So, the Investigator recommended that Santander refund the payments Mrs C made after and including the £15,000 payment, as well as pay Mrs C 8% simple interest per year on that amount from the date of each payment to the date of settlement.

Mrs C accepted our Investigator's recommendations, but Santander didn't agree.

In summary, Santander said:

- *Mrs C's loss did not take place from her Santander account, so it should not be responsible for reimbursing her.*
- *The Investigator did not explain why Mrs C has not been directed to complain to W.*
- *The recent Supreme Court judgement in the case of Philipp vs Barclays Bank Plc UK [2023] UKSC 25 confirmed that where a bank receives a payment instruction from a customer which is clear and leaves no room for interpretation and the customer's account is in credit, the bank's primary duty is to execute the payment instruction. This is a strict duty, and the bank must carry out the instruction promptly without concerning itself with the 'wisdom or risks of the customer's payment decisions'.*
- *Mrs C's account was in credit and there is no dispute that she authorised the payments.*
- *The Confirmation of Payee 'CoP' scheme showed that the account Mrs C was paying was held in her name.*
- *She'd set up multiple payees in the past and, by the point of suggested intervention, had made four previous payments to W.*
- *So the payment instruction was clear and without room for interpretation. There was no reason for it to be concerned about the payment.*
- *It acted in line with industry standards when making the payment and cannot be held responsible for it.*

In addition to the specific points above, Santander have shared some broader concerns about its liability for payments of this nature. I've summarised those arguments below.

- *There was no legal duty on it to protect customers from financial harm from fraud.*
- *Neither do any of the rules, standards and guidance issued by the Financial Conduct Authority place such a duty on it.*
- *It does not accept that the British Standards Institute PAS 17271 ("the BSI Code"¹) places any duty on it either.*

¹ British Standards Institute's 'Protecting Customers from Financial harm as a result of fraud and financial abuse – Code of Practice'

- *The CRM Code now represents good industry practice, including the obligation to provide warnings and, where appropriate, intervene when it identifies a scam risk. But the CRM Code specifically excludes this type of payment, as will the forthcoming mandatory reimbursement scheme the Payment Systems Regulator (“the PSR”) is currently consulting on.*
- *So, asking it to reimburse payments that fall outside of those schemes goes beyond what could be considered good industry practice and regulatory expectations.*
- *It questions whether 8% interest, rather than the interest rate that applied to the originating account is appropriate.*

The case has now been passed to me to consider afresh.

What I've provisionally 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I have reached a different provisional conclusion to the Investigator about what is fair and reasonable in all the circumstances of this complaint and about what Santander should do to put things right.

For the reasons I shall set out below, I am minded to conclude Santander should have made further enquiries prior to processing the £15,000 payment on 29 September 2022 and, if it had done so, the scam would have come to light and the losses Mrs C incurred after that payment would have been prevented. But I am also satisfied that in the circumstances of this complaint, Mrs C should bear some responsibility (50%) for the losses she suffered from the time of the £15,000 payment.

I shall explain why.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mrs C's account is that she is responsible for payments she's authorised herself. And, as the Supreme Court has recently reiterated in Philipp v Barclays Bank UK PLC, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:

- *The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.*
- *The express terms of the current account contract may modify or alter that position. For example, in Philipp, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of*

APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.

In this case, Santander's June 2022 terms and conditions gave it rights (but not obligations) to:

- 1. Refuse any payment instruction if it reasonably suspects it relates to fraud or any other criminal act.*
- 2. Delay payments while fraud prevention checks take place and explained that it might need to contact the account holder if Santander suspects that a payment is fraudulent. It said contact could be by phone.*

So, the starting position at law was that:

- Santander was under an implied duty at law to make payments promptly.*
- It had a contractual right not to make payments where it suspected fraud.*
- It had a contractual right to delay payments to make enquiries where it suspected fraud.*
- It could therefore refuse payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things.*

Whilst the current account terms did not oblige Santander to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Santander from making fraud checks before making a payment.

And, whilst Santander was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good practice at the time, it should fairly and reasonably have been on the look-out for the possibility of APP fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Santander, do (and as Santander did in fact do in this case when Mrs C attempted to make the final payment on 10 October 2022).

I am mindful in reaching my conclusions about what Santander ought fairly and reasonably to have done that:

- FCA regulated banks are required to conduct their “business with due skill, care and diligence” (FCA Principle for Businesses 2) and to “pay due regard to the interests of its customers” (Principle 6)².*
- Banks have a longstanding regulatory duty “to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime” (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001).*
- Over the years, the FSA, and its successor the FCA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime, including*

² Since 31 July 2023 under the FCA's new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

various iterations of the “Financial crime: a guide for firms”.³.

- Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).
- The October 2017, BSI Code, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code, but in my view the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now.
- Santander is also a signatory of the CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers. The CRM Code does not cover all authorised push payments (APP) in every set of circumstances (and it does not apply to the circumstances of these payments), but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers carrying out any APP transactions.

Overall, taking into account the law, regulators rules and guidance, relevant codes of practice and 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 banks 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, or provided additional warnings, before processing a payment – as in practice all banks do (and Santander did in fact do in this case on 10 October 2022).
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers)

³ For example, both the FSA’s Financial Crime Guide at 4.2.5G and the FCA’s 2015 “Financial crime: a guide for firms” gave examples of good practice in relation to investment fraud saying:

“A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could cover losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are informed by this assessment.

A bank contacts customers if it suspects a payment is being made to an investment fraudster.

A bank has transaction monitoring rules designed to detect specific types of investment fraud. Investment fraud subject matter experts help set these rules.”

and the different risks these can present to consumers, when deciding whether to intervene.

Should Santander have fairly and reasonably made further enquiries before it processed Mrs C's payments?

Santander did contact Mrs C on 10 October 2022 when she attempted to transfer £12,400 to her account with W. This resulted in Mrs C realising she'd fallen victim to a scam. I've thought carefully about whether Santander should have intervened any earlier.

Whilst I have set out in detail in this provisional decision the circumstances which led Mrs C to make the payments from her Santander current account and the process by which that money ultimately fell into the hands of the fraudster, I am mindful that Santander had much less information available to it upon which to assess whether any of the payments presented an increased risk that Mrs C might be the victim of a scam.

So, I have considered the steps Santander ought fairly and reasonably to have taken into account with only the more limited information it had.

Santander would not have had any reason or basis to connect the £215 payments made from and into her account in July 2022 to the payments Mrs C made later to W from mid-August 2022 onwards.

Nor in my view should Santander fairly and reasonably have taken further steps than it did when Mrs C made the first two transfers of £1,000 and £4,000 to her account with W on 19 August 2022.

Whilst those payments involved a new payee and were payments to an account with an Electronic Money Institution (which are reporting increasing instances of customers being scammed, including as a consequence of multi-stage scams often involving cryptocurrency), I think Santander could reasonably take some comfort (at least initially) from the fact that:

- *The payments were being made to an account in Mrs C's name – as confirmed by Confirmation of Payee.*
- *Mrs C indicated when making the first payment that she was transferring the money to her own account.*
- *Mrs C was not deterred by the 'safe account warning' Santander provided – an example of a scam associated with payments to what the consumer believes is an account in their own name.*

In addition, the payments were not of significant amounts and represented only a small part of her current account balance which stood at over £30,000 at the time.

Similarly, when Mrs C made the next two payments of £5,700 and £500 on 28 September 2022, I am not persuaded Santander ought fairly and reasonably to have done more than it did.

As before: the payments were made to an account in Mrs C's own name, were for similar amounts to the previous payments and represented only a small part of her current account balance.

In addition, several weeks had passed between the payments on the 19 August 2022 and the payments on 28 September 2022, which may have provided some additional assurance to Santander that Mrs C was making the payments to her W account in ordinary circumstances rather than as a step in a multi-stage scam. The payments would appear to

have been – as Santander says – to what was becoming an established payee, although as with most payments it could not rule out the possibility of a scam entirely.

But when Mrs C made another more sizeable payment of £15,000 on 29 September 2022 to her account with W the following morning, I am satisfied Santander ought fairly and reasonably to have identified from the information available to it that there might be increased risk associated with the payment and, in those circumstances it should fairly and reasonably have made further enquiries.

I accept the £15,000 payment was being made to an account in Mrs C's name and by that time she had made four payments to the same account and the account would on the face of things have appeared to Santander to have been an established account. But the £15,000 payment was a significantly larger payment than Mrs C had made from her current account in the previous year, and it was significantly larger than the payments Mrs C had made to her account with W up to that point. Importantly, it was also the third separate payment Mrs C had made to her W account in a 17-hour period, having previously sent over £6,000 to the account the previous evening. Mrs C's account had also been significantly depleted by this point, having maintained a fairly consistent balance over the previous year.

In my view this combination of circumstances ought fairly and reasonably to have led Santander to make additional enquiries before making the payment to establish the circumstances in which Mrs C was making what had become an out of character series of payments involving a large amount of money in a short period to an account with an EMI – a pattern of activity that could be consistent with certain types of scam, notwithstanding the payments were being made to an account in Mrs C's own name.

In reaching my view that Santander ought fairly and reasonably to have made further enquiries, I consider Santander ought to have been mindful of the potential risk to Mrs C of 'multi-stage' fraud – whereby victims are instructed to move funds through one or more legitimate accounts held in the customer's own name to a fraudster. The use of and risks to consumers of multi-stage fraud were well known to banks in September 2022.

Whilst I am satisfied – and my provisional conclusion based on the evidence and arguments presented so far is that – Santander ought fairly and reasonably to have made enquiries before making the £15,000 payment, I recognise (as I have set out above) that there were features of the pattern of payments and events prior to the £15,000 payment which pointed against a scam risk, consequently, the question of whether Santander should fairly and reasonably have intervened before the £15,000 payment is not a straightforward one.

In contrast, when Mrs C made the next £8,000 payment, the possibility that there might be a scam was significantly increased and that possibility should, in my view, have been very clear to Santander. By that stage, she was attempting a fourth payment to W in under 24 hours and two significant payments on the same day within a few hours. Whilst there may have been legitimate reasons why Mrs C was making a series of payments in a short period to an e-money account, I am satisfied Santander ought to have recognised the enhanced scam risk.

If Santander had made further enquiries before the £15,000 payment, would that have prevented the losses Mrs C incurred after that point?

Santander hasn't made any submissions in relation to that question, but I think it's more likely than not that Mrs C wouldn't have made further payments to the fraudster if Santander had intervened.

When Santander did eventually speak to her, she was open and honest about what she was doing – paying fees in order to release her Bitcoin. Santander immediately recognised that she was falling victim to a scam then and, given that the circumstances were broadly the same when she was making the £15,000 payment (also for reasons Santander would have recognised as implausible), I think the scam would have come to light then too.

Should Santander be fairly and reasonably held responsible for Mrs C's loss?

In reaching my decision about what is fair and reasonable, I have taken into account that Mrs C transferred the money to an account in her own name, rather than directly to the fraudster, so she remained in control of her money after she made the payments from her Santander account, and it took further steps before the money was lost to the fraudsters.

But for the reasons I have set out above, I am satisfied that it would be fair to hold Santander responsible for Mrs C's losses (subject to a deduction for Mrs C's own contribution). As I have explained, the potential for multi-stage scams ought to have been well known to Santander and as a matter of good practice Santander should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams. I'm satisfied Santander should fairly and reasonably have made further enquiries before the £15,000 payment and, if it had, it is more likely than not that the scam would have been exposed and Mrs C would not have lost any more money. In those circumstances I am satisfied it is fair to hold Santander responsible for Mrs C's loss.

I have also taken into account that the payments were made to a regulated business – W, and Mrs C might potentially have a claim against W in respect of its actions (although W is not a party to this complaint and so I make no finding about its role here).

Whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against two financial businesses about connected circumstances, Mrs C has not referred a complaint about W to me and DISP does not empower me to instruct Mrs C to make or refer a complaint to me about another business.

I am required to consider the complaint in front of me. I have found that Santander did not act fairly and reasonably in the circumstances of this case. And whilst it is a possibility that Mrs C may have cause to complain against W, I am not persuaded it would be fair to reduce the award solely for that reason. Mrs C is entitled to choose to complain only about Santander and I am satisfied that Santander could have prevented the losses she suffered if it had acted fairly and reasonably.

I have also taken into account Santander's comments about the PSR's proposed mandatory reimbursement scheme, which – as currently proposed – would not require Santander to reimburse Mrs C. The PSR's proposals are not yet in force and are not relevant to my decision about what is fair and reasonable in this complaint. But I do not consider the fact that the PSR does not propose to make it compulsory for payment service providers to reimburse consumers who transfer money to an account in their own name as part of a multi-stage fraud, means that Santander should not compensate Mrs C in circumstances when it failed to act fairly and reasonably, as I have found was the case here.

Should Mrs C bear any responsibility for her losses?

I've thought about whether Mrs C should bear any responsibility for her loss. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint.

I understand there were sophisticated aspects to this scam. Mrs C believed that the investment was promoted by a public figure and was given access to a trading platform, which I accept might have seemed convincing to her. In addition Mrs C was able to withdraw her initial deposit which would have reassured her and given the proposed investment the cloak of credibility. I'm also mindful of her difficult personal circumstances at the time (though there's no indication that Santander were).

Nevertheless, by the time Mrs C came to make the £15,000 transaction she was already making a third payment in order to release her investment. While I accept the reasons for the first two payments might have seemed reasonable to someone with little experience of investing or cryptocurrency, the £15,000 payment was supposedly for a tax liability. I'd reasonably expect Mrs C to have some understanding of how, and to whom, tax is properly paid (and her Santander statements indicate she did). I'm satisfied Mrs C should reasonably have been concerned by the repeated and seemingly unexpected demands for money, despite the profitability of her investment. But it doesn't appear that Mrs C made any enquiries into the legitimacy of this request and, I suspect, by this point, she was simply paying money out of the hope that she'd be able to access her investment.

In addition, the magnitude of the increase in value of her original investment between 19 August 2022 and 28 September 2022 ought to have alerted Mrs C to the possibility that something might be amiss, especially given the repeated demands for unexpected fees. The returns were simply too good to be true.

So, I think Mrs C did have a role to play in what happened and I think that the amount Santander should pay to her in compensation should fairly and reasonably be reduced to reflect that role. Given how serious I think Mrs C's concerns about the legitimacy of the investment ought reasonably to have been, I think that a fair deduction is 50%.

Could Santander have done anything else to recover Mrs C's money?

As the funds went to an account in Mrs C's name before being converted into cryptocurrency and sent to the fraudsters, it could not have been recovered by Santander. Despite this, Santander did attempt to recover Mrs C's funds but it was informed by W that no money remained.

Conclusions

Overall, having considered the matter carefully, I think Santander should refund 50% of the payments Mrs C made from 29 September 2022. As I have set out above, in total there were four payments with a combined value of £30,000. So Santander should pay Mrs C £15,000.

I think that Santander should also pay 8% simple interest per annum on that amount from the date of each payment to the date of settlement. It argues that the originating account rate would be more appropriate. I disagree. Mrs C has been deprived of the use of this money for over a year and whilst the money was held in her current account prior to the transfers, she may have used it in a variety of ways if it had remained available to her. I think 8% simple is a fair interest rate in those circumstances.

If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs C how much it's taken off. It should also give Mrs C a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My provisional decision

I am provisionally minded to uphold in part this complaint and instruct Santander UK Plc to pay Mrs C:

- *50% of the four completed payments made from 29 August 2022 – a total of £15,000.*
- *8% simple interest per year on each payment from the date of each payment to the date of settlement.*

Mrs C accepted my provisional decision. Santander continued to disagree. In summary, it said:

- Proper consideration of regulatory expectations and requirements, as well as good industry practice, should not result in a conclusion that it is fair and reasonable to hold it responsible for Mrs C's loss.
- While it acknowledges the application of PRIN it must also take into account its legal obligations to Mrs C and the rules in the FCA handbook.
- SYSC 3.2.6R and other AML requirements all relate to the risk of Mrs C using her account to launder funds, rather than forming the basis of a requirement to protect her from the risk of fraud.
- SYSC 3.2.6R is also qualified by reasonableness and there is no expectation that it should or could identify and prevent every payment that carries risk of being associated with a scam.
- My provisional decision fails to take into account:
 - a) The need to strike a balance between taking reasonable measures to detect fraud and its legal obligations under the PSR 2017 and common law.
 - b) Its fraud detection systems, in line with the BSI Code and CRM Code, are designed to mitigate the risk of fraud, there is no expectation on it to detect and prevent every transaction that turns out to be fraudulent.
 - c) The fact that its fraud detection systems have to be carefully calibrated to ensure that payments are not interrupted to a 'disproportionate degree', taking into account the number of payments it processes, particularly 'own account' transfers.
 - d) The fact that the payment went to another FCA authorised firm is key to deciding what is fair and reasonable in this case. W is subject to the same FCA principles, AML requirements and good industry practice as Santander is.
- There are 'genuine differences' between the bank sending funds to a customer's own account and a firm sending money directly to a fraudster. It processes very significant volumes of own account transfers and only a very small proportion turn out to be fraudulent. And, while it does have strategies to prevent this kind of fraud, it must have regard for the level of risk this kind of payment presents.
- While it accepts that multi-stage fraud of this nature is on the rise, it can't be expected to detect this kind of fraud to the degree suggested in my provisional decision.
- W had far more information on which to base a risk assessment of the payments than it did, so it was far better placed to meaningfully intervene in the transactions.
- It again reiterates that both the CRM and upcoming PSR scheme have consciously excluded payments of this nature and, it feels, a customer would have no legal basis on which to recover funds from it. It argues that the exclusion of this type of payment from both schemes is relevant and should be taken into account, particularly as the PSR scheme was an opportunity for both the government and Payment Systems Regulator to extend protections to this type of fraud, if they felt it was the right thing to do.

- It's unclear why I haven't exercised my discretion under DISP 3.5.2 to inform Mrs C that it might be appropriate to complain against W.
- If I decide that the complaint should be upheld, despite its further submissions, it agrees that there should be a deduction to the amount Mrs C is reimbursed to take into account her role in what happened. It made some additional points to support this view and argues that there should be a deduction of at least 50%.
- The interest award I recommended does not reflect available interest rates at the time of the scam or the position taken by the courts in relation to interest. The award represents a windfall to Mrs C.
- While it accepts that she might have used the money in a variety of ways, she would not have been able to obtain the recommended interest rate through any standard savings product.

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.

I've considered Santander's further submissions carefully but they don't persuade me to reach a different decision. I've explained in some detail in my provisional decision why I thought that Santander should, fairly and reasonably, be responsible for Mrs C's loss and I have little to add to what I've already said.

In my provisional decision I acknowledged that the fact the payments were identifiably going to an account held in Mrs C's name at another FCA-authorised firm was an important factor when deciding the level of risk the payments presented. I explained that Santander could have taken some comfort from that fact and I carefully weighed up the risk the payments presented against the knowledge (and lack of knowledge about the eventual destination of the funds) that Santander had. I did not suggest that Santander could or should detect and prevent every fraudulent payment and I acknowledge the balance it needs to strike between preventing fraud and not unduly inconveniencing customers. I've explained why, in this case, fairly and reasonably and taking into account that neither the CRM Code nor the PSR's mandatory reimbursement scheme (as currently proposed) would cover these payments, I don't think Santander got that balance right. I don't have anything further to add on this.

DISP 3.5.2, only gives me the powers to inform Mrs C it might be appropriate to complain against another respondent (and I suspect she's well aware that she *could* complain about W). It does not compel me to do this and it certainly doesn't allow me to compel Mrs C to refer a complaint about W instead of, or as well as, her complaint against Santander.

Finally in relation to interest, while Mrs C may not have been able to obtain a savings account with a similar rate of interest at the point these payments were made, my interest award takes into account the overall impact of being deprived of those funds and that Mrs C may have utilised the money in ways other than saving it.

So, for the reasons I've explained, I see no reason to depart from my provisional findings, as set out above.

My final decision

I uphold in part this complaint and instruct Santander UK Plc to pay Mrs C:

- 50% of the four completed payments made from 29 August 2022 – a total of £15,000.

- 8% simple interest per year on each payment from the date of each payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 15 January 2024.

Rich Drury
Ombudsman