

## The complaint

Mrs L complains that Santander won't refund money she lost when she was the victim of a crypto scam.

Mrs L is represented by a firm I'll refer to as 'K'.

## What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here. I sent my provisional thoughts on this complaint to both parties. I said:

*"...Mrs L complains that Santander won't refund money she lost as a result of a crypto scam. The relevant payments are:*

<b>Date</b>	<b>Transaction type</b>	<b>Payee</b>	<b>Amount</b>
27 March 2021	Debit card	L	£500
30 March 2021	Faster payment	L	£100
30 March 2021	Faster payment	C	£2
30 March 2021	Faster payment	C	£500
27 April 2021	Faster payment	C	£1,000
29 April 2021	Faster payment	C	£500
30 July 2021	Faster payment	C	£2,500
9 August 2021	Faster payment	C	£3,700
10 August 2021	Faster payment	C	£1,250
<b>Total</b>			<b>£10,052</b>

*As Santander has pointed out, these payments aren't covered by the CRM code – which can offer a potential means of obtaining a refund following APP scams. This is because it doesn't cover debit card transactions or payments made to an account held in a person's own name. I've therefore considered whether Santander should reimburse Mrs L under any of their other obligations.*

*In broad terms, the starting position in law is that a bank is expected to process payments that their customer authorises them to make. It isn't disputed that Mrs L authorised the payments from her Santander account. Therefore, under the Payment Services Regulations 2017 and the terms of her account, Santander are expected to process Mrs L's payments and she is presumed liable for the loss in the first instance.*

*However, taking into account the regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for Santander to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud.*

*So, the starting point here is whether the instructions given by Mrs L to Santander (either individually or collectively) were unusual enough to have expected additional checks being carried out before the payments were processed.*

*When considering this, I've kept in mind that banks process high volumes of transactions each day. And that there is a balance for Santander to find between allowing customers to be able to use their account and questioning transactions to confirm they're legitimate. Here, the payments were made to legitimate crypto exchanges (L and C). And while there are known fraud risks associated with crypto, as scams like this have unfortunately become more prevalent, many individuals invest in crypto legitimately. Having looked at Mrs L's prior account usage, it was typically used for relatively low value day to day transactions – with the exception of a £1,000 transaction on 21 January 2021 and a £2,276.07 transaction on 15 March 2021.*

*I therefore don't think the scam payments between 27 March and 29 April 2021 were of a significant enough value, either individually or collectively, to have been seen by Santander as unusual or out of character for Mrs L. The payments also weren't made in quick succession, which can be a common feature of scams, but were spread over several weeks. I therefore don't think Santander had sufficient reason to suspect Mrs L was at risk of financial harm at that time. Because of this, I wouldn't have expected Santander to have taken additional steps or carried out additional checks before processing the payments.*

*Mr A (Mrs L's husband, who made the transactions on the account with her authorisation) has said that one of the payments was stopped by Santander – thereby prompting them to call Santander to get it released. He says that, despite informing Santander that the payment was for investment purposes, he wasn't questioned further about the nature of the investment nor was he given any specific warnings that it could be fraudulent. Instead, he says Santander released the payment without any further checks or encouragement to question the legitimacy of the investment opportunity.*

*I asked Santander to confirm whether a payment was indeed stopped before being processed. And, if it was, for Santander to provide the relevant supporting evidence to show what happened. Santander has confirmed that the £2,500 payment on 30 July 2021 was detected but they couldn't provide any further details as to what happened – including how the payment was cleared. I'm therefore satisfied that there was an interaction between Mrs L/Mr A and Santander at this time, and that Santander therefore had an opportunity at this point to establish whether Mrs L was at risk of financial harm from fraud.*

*Where the evidence is incomplete, inconclusive, or contradictory, I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.*

*I can't be entirely sure what interaction took place with Mrs L (and/or Mr A) in respect of the £2,500 payment. But here, and in the absence of evidence to show otherwise, I see no reason to doubt Mr A's recollection of the conversation with Santander – that being he disclosed the payment was for investment purposes but Santander didn't question him further about it or provide any investment fraud warnings.*

*I also consider this most likely as I haven't seen anything to suggest that Mrs L or Mr A wouldn't have been honest with Santander had they been questioned about the payment – which is supported by the payment purpose given for the online transfer being accurate, 'transfer to an investment'. And so, had Mrs L and her husband been appropriately questioned about the payment, I would've reasonably expected Santander to have had sufficient reason to suspect Mrs L was likely falling victim to a crypto investment scam.*

*This is because, by this point, crypto scams had continued to increase in frequency. And firms, including Santander, ought to have been aware of this risk to their customers – including situations whereby the payment was going to the customer's own account before moving it on again to the fraudster. And in this type of scenario, as we have here, I would've expected Santander to have asked additional questions to establish the potential risk of financial harm to Mrs L. Had this happened, I think appropriate questioning would've uncovered Mr A had come across the investment opportunity through Facebook and that a third party 'adviser' was guiding him to invest by moving funds through a legitimate crypto exchange to another trading platform. These, along with the payments increasing in value, ought to have been clear red flags to Santander.*

*It follows that I would've expected Santander, as a financial expert and Mrs L's trusted bank, to have warned Mrs L, and her husband, that it was highly likely the investment was a scam. And advised them not to proceed with making any further payments. I've no reason to think Mrs L wouldn't have heeded the advice of Santander. And so, on balance, I don't think Santander's intervention with the £2,500 was sufficient or went far enough. Had it been, I consider it more likely than not that Mrs L wouldn't have proceeded with making the payment or those that followed. I therefore consider Santander failed to protect Mrs L from the loss she suffered.*

*I've given thought to whether Mrs L should bear some responsibility by way of contributory negligence. Having done so, I don't think that would be fair here. This is because, from what I understand, neither Mrs L nor her husband were experienced in crypto investing. And so, they relied heavily upon the guidance of what they considered to be a genuine adviser – with the adviser working for what appeared to be a genuine firm that had a London based address. So, taking all this into consideration, while Mrs L and Mr A may have been overly trusting of the adviser, I don't think their actions were negligent to the point whereby it would be fair to reduce the award. But instead, I think Santander's failure to undertake an appropriate intervention upon detecting the £2,500 payment caused Mrs L's losses from this point onwards.*

### ***To put things right and next steps***

*To put things right, I think Santander should refund £7,450 – that being the final three payments. They should also apply 8% simple interest, per year, for loss of use of money during this time - calculated from the date of each payment to the date of settlement.*

Santander didn't respond – despite the above being sent to them on two occasions, 29 August and 18 September 2024.

K confirmed Mrs L's acceptance.

Given both parties have had the opportunity to respond, I can proceed with making my final decision on this 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.

In the absence of any further points for my consideration, I see no reason to depart from the above. I therefore remain of the view that Santander is responsible for the loss Mrs L suffered from the £2,500 payment onwards. And that it wouldn't be reasonable to reduce the award due to contributory negligence on Mrs L's part in these circumstances. It follows that I think Santander should refund £7,450 to Mrs L and pay 8% simple interest to recognise the loss of use of money she suffered.

### **My final decision**

My final decision is that I uphold this complaint. I direct Santander UK Plc to:

- Refund £7,450 – that being the last three payments.
- Pay 8% simple interest, per year, calculated from the date of each payment to the date of settlement less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 29 October 2024.

Daniel O'Dell  
**Ombudsman**