

## The complaint

Mrs N complains that Santander UK Plc (Santander) won't refund money she lost in an investment scam.

## What happened

*What Mrs N says:*

Mrs N says she had no investment experience and was introduced to the idea of crypto currency trading by a friend who recommended she invest with a crypto trading house (which I will call 'firm A'). She was told it was dealing with 'legacy' investments and had paid out to some contacts she knew. She was told she would expect returns of 4-5%. She had no reason to think the investments weren't genuine. Mrs N made payments to a crypto wallet with an exchange firm and from there transferred the money to firm A.

Mrs N says she received a small number of payments, but when these stopped in 2022, she realised she'd been scammed. (**continued**)

The payments and receipts were:

Date	Payment	Amount
16 January 2021	Faster payment – crypto wallet	£10

18 January 2021	Credit	(£5)
19 January 2021	Faster payment – crypto wallet	£4,000
25 January 2021	Faster payment – crypto wallet	£3,700
27 January 2021	Faster payment – crypto wallet	£3,700
28 January 2021	Faster payment – crypto wallet	£3,700
15 February 2021	Faster payment – crypto wallet	£750
23 February 2021	Faster payment – crypto wallet	£750
3 February 2022	Faster payment – crypto wallet	£1,000
4 February 2022	Faster payment – crypto wallet	£750
6 February 2022	Credit	(£1,758.69)
15 March 2022	Faster payment – crypto wallet	£250
<b>Total net loss</b>		<b>£16,846.31</b>

The Financial Conduct Authority (FCA) published a warning about firm A in December 2019.

Mrs N says Santander should've intervened in the payments but didn't. She says the bank should refund the money she's lost.

*What Santander said:*

Santander said Mrs N had authorised the payments and entered a one-time passcode. So, the bank said they weren't liable for the payments and declined Mrs N's claim.

*Our investigation so far:*

Our investigator didn't uphold Mrs N's complaint. She said the payments weren't unusual for Mrs N's spending pattern and therefore Santander didn't need to intervene. There was a healthy balance left in the account after the payments were made; some of the payments were made in quick succession; but in some instances were spread over a year.

She said Santander had tried to recover the money when Mrs N complained (in March 2024) but no funds remained to be recovered by that time.

Mrs N didn't agree. She said that there were two large payments leading up to the scam payments - and it wasn't fair to make a decision on the basis of those. And the remaining balance of £2,500 wasn't healthy. She also said that the payments in January 2021 were in quick succession – over a number of days.

Mrs N asked that an ombudsman look at her complaint and so it has come to me.

## 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'm sorry to hear that Mrs N has lost money in a cruel scam. It's not in question that she authorised and consented to the payments in this case. So although Mrs N didn't intend for the money to go to a scammer, she is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 make 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.

I need to decide whether Santander acted fairly and reasonably in its dealings with Mrs N when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to 'faster payments' made to another UK beneficiary – and in this case, the payments were made to Mrs N's own account – her crypto wallet. **(continued)**

The first consideration here is: if the payment was of a sufficient size and was out of character with how Mrs N normally used her account – then we would expect Santander to have intervened and spoken to her about them.

I looked at Mrs N's account and there were some large payments:

*Before the scam:*

March 2020: £344,008.

October 2020: £6,492; £2,370.

*During January/February 2021 payments:*

£2,288; £1,206; £6,925.

*Before February /March 2022 payments:*

March 2021: £1,666; £1,060.

April 2021: £18,076; £4,314; £1,950.

May 2021: £2,777.

June 2021: £1,164; £13,525.

August 2021: £1,525.

December 2021: £1,234.

Mrs N argues that the payments shown in March 2020 and October 2020 were exceptional and didn't represent the normal use of her account – as she was undertaking a house purchase and renovations. But I can also see there were large payments made at the time of the scam payments during January/February 2021. I have to reach a balanced view here – and I think it is reasonable for me to say the scam/ disputed payments in question were not sufficiently unusual to have expected Santander to intervene - in the period of the first payments in January / February 2021.

Turning to the later period of payments – in February 2022 to March 2022, I'm satisfied that these weren't unusual – given the payments activity I've shown.

I must also consider that there's a balance to be made; Santander has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. And here – these were payments and for amounts that were in keeping with the normal account activity. Therefore, in this case, I think Santander acted reasonably in processing the payments – I don't think that I could reasonably say that Santander should have stopped the payments for further checks.

There were reasonable credit balances left in Mrs N's account – between £9,000 and £10,000 between 25 January 2021 and 27 January 2021 (reducing to £2,229 on 28 January 2021). I say that because a characteristic of scams is that accounts are drained of funds – and that wasn't the case here.

I'm also mindful that the payments were spaced apart: the first phase of payments took place over two weeks. And then there were two payments after a further two weeks. And then there was a gap of a year before the final payments were made. A characteristic of scams is that payments are made in quick succession, usually on the same day or over a small number of days - which on balance, wasn't the case here.

It's also reasonable for me to say that as the payments were made over a long period of time – Mrs N would have had the chance to consider what was happening to her money – for example by looking at the investment performance, asking for withdrawals to be made to her, looking at online reviews or taking advice from an advisor or friends. But I've not seen any evidence she did this. And I can see there was a warning from the FCA about firm A in December 2019 – this was before Mrs N made the payments.

While this doesn't affect this final decision and while this may be with the passage of time, I'm also mindful that we've not seen any substantial evidence as to how the scam took place – for example, I've not seen any emails (in 2020-2021), WhatsApp chats, etc; nor have we seen any website screenshots of firm A's investments, nor how the funds were transferred for the crypto wallet to firm A. Mrs N says she had a few payments from firm A – but I can only see one payment into her Santander account - which is shown in the schedule. It's not clear why Mrs N made further payments in 2022 – if she was by then unhappy with firm A.

*Recovery:* We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Santander took the necessary steps in contacting the bank that received the funds – in an effort to recover the money.

Santander showed us they contacted the provider of the crypto wallet, and no funds remained to be repaid. Given that the scam took place in 2021-2022, and Mrs N complained to Santander in March 2024 – this wasn't a surprise. The evidence Santander showed us was that the funds were removed from the crypto wallet almost immediately and used to purchase crypto currency.

I'm sorry Mrs N has had to contact us in these circumstances. I accept she's been the victim of a cruel scam, but I can't reasonably hold Santander responsible for her losses.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 9 September 2024.

Martin Lord  
**Ombudsman**