

The complaint

Mrs W complains that Santander UK Plc hasn't refunded her after she fell victim to an investment scam.

What happened

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

Mrs W found an apparent investment opportunity being advertised online. The advert claimed to be regarding an investment backed by Martin Lewis and featuring his endorsement. Mrs W was interested so clicked on the advert and then registered her details. What Mrs W didn't know at the time was that the advert had been created by fraudsters.

Mrs W was soon contacted and persuaded to invest by the fraudsters. She's explained how they played on her circumstances, including her having an unwell husband and wanting to give a better future to her grandchildren.

The scammers explained that the investment would be into cryptocurrency and that she'd be assisted at each stage. They told Mrs W she could double or triple her money in a few weeks. The scammers also told Mrs W that Santander might try to stop her transferring money to the investment, asking questions about what she was doing, as they didn't want the funds to be moved out of their own accounts.

Mrs W then set up cryptocurrency wallets at the scammer's instruction. She started to fund the accounts, initially with a small payment of £250 (not from her Santander account). The money was then moved on. Mrs W thought it was going to a trading platform where an account had been created for her. But it was being lost to the fraudsters.

Mrs W saw that the money she'd invested began to make returns. And so she decided to commit more funds and started making faster payments (bank transfers) from her Santander account to her cryptocurrency wallets. I've included a table of the first six payments made by Mrs W toward the scam.

Date	Amount
8 March 2022	£1,530
10 March 2022	£3,000
18 March 2022	£10,000
21 March 2022	£5,000

22 March 2022	£17,000
29 March 2022	£20,000

These weren't the only payments made toward the scam. There were a further nine payments made over the course of around six weeks. The total sent was £144,530.

Santander stopped some of these payments to question Mrs W about them as they'd flagged on their systems as suspicious, and there was a concern Mrs W might have been at risk of financial harm through fraud.

Santander was satisfied with Mrs W's responses to the questions it asked and released the payments. Mrs W was also happy to proceed following each of these interactions.

In June 2022 Mrs W decided she wanted to withdraw her investment and she spoke to the scammers about doing so. She was encouraged to do a final deal but, when she executed it, she was told by the scammers she'd had a technical failure which had then led to her losing all her money. It's then she realised she'd been scammed.

Santander considered what had happened and told Mrs W it was unable to reimburse her loss. It said she'd authorised all the payments herself and they'd gone to an account in her name and which she controlled (the cryptocurrency wallets). And it said it had repeatedly questioned her about what she was doing and warned against scams, with Mrs W giving dishonest answers at times.

Mrs W was unhappy with Santander's response and so brought her complaint to our service. One of our investigator's considered the complaint and didn't recommend it be upheld. She didn't think Santander's interventions were good enough. But she also thought, based on Mrs W's responses and the wider circumstances of the complaint, that Mrs W would always have proceeded, even if Santander had intervened properly.

Mrs W disagreed and so the complaint was passed to me. I reviewed the evidence and have already spoken to both parties about my intended outcome, with a partial refund being due to Mrs W.

Mrs W accepted my findings, but Santander didn't agree, and so I'm now confirming the outcome in this final decision.

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'm upholding the complaint. I've already explained this to both Santander and Mrs W. And because of that I'm not going into extensive detail here.

Broadly speaking, the starting position at law is that Santander is expected to process payments authorised by Mrs W quickly. And once those payments have been authorised, Mrs W is generally deemed responsible for them. This is set out in the Payment Service Regulations (2017) and Mrs W's account terms and conditions.

However, taking into account the relevant law, regulations, industry guidance, and best practice, firms like Santander ought fairly and reasonably to have systems in place to monitor transactions and accounts for signs that its customer might be at risk of financial harm through fraud. Where such risks are detected, there ought to be action from the bank to intervene through the giving of warnings and scam education. Sometimes, that will mean stopping a payment so that the customer can be questioned directly about it.

Where there is a failure by a firm to properly intervene and protect a customer, it might then be fair and reasonable to say that firm becomes responsible for the customer's loss. And so,

in Mrs W's case, it's for me to determine if Santander made an error(s) over the course of the scam and, if so, whether it's fair and reasonable for it to be held responsible for Mrs W's losses as a result.

Santander should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name.

The fact that the money used to fund the scam came from elsewhere and/or wasn't lost at the point it was transferred to consumer's own account does not alter that fact and I think Santander can fairly be held responsible for Mrs W's loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against either the firm that is the origin of the funds or the point of loss.

It's evident in this case that Santander accepts there is a need to protect customer's by questioning authorised payments, even those made to accounts in their own name. It did so many times over the course of the scam. Payment instructions were paused so that telephone conversations could take place. And I can see that those calls and interventions took place at suitable points across the scam timeline. So there isn't a need for me to make a finding on exactly when Santander needed to step in. Instead, I'm going to consider the quality of the interventions, and whether they went far enough in the face of the scam risk that was being presented.

I do think it's necessary to set out though, that by the time Mrs W was making the payment of £10,000 on 18 March 2022, Santander ought to have been very concerned by the payment activity on Mrs W's account. Even just three payments in, the account activity bore all the hallmarks of a cryptocurrency investment scam. Mrs W was a pensioner with no experience in cryptocurrency investment. Within ten days she had then moved to making three payments and investing £14,530 into cryptocurrency, which Santander ought to have recognised as being extremely risky, not only from a volatile investment perspective, but specifically regarding it as a significant scam risk.

Santander's concerns ought only to have grown from that point on, with the significant increases in amounts being sent in such a short space of time. With each new payment the account activity looks more and more concerning.

I have considered all the interactions Santander went on to have with Mrs W. I'm not persuaded any of them went far enough or were proportionate to the scam risk being presented. As explained already, I've been through much of this detail with Santander and so I'll not repeat it all here. An important point to note is that the volume of interventions does little to persuade me that Santander did enough. Unless they were quality interventions, they were never likely to have a significant impact or effect on Mrs W, given she'd been drawn into the scam and was trusting of the fraudsters.

I can see that across the various interventions Santander's questions were a mixture of repetitive, closed, unrelated to the identifiable scam risk, and didn't push far enough into the detail of what Mrs W was doing.

Santander's questions were, at the best of times, only focused on the account which was receiving the payment, and whether Mrs W had opened and controlled it (which she had and she did). There was never any clarification asked as to what was happening with the money from there. And that's despite the fact Santander ought to have been aware of how cryptocurrency investment scams like this work, with funds being moved on again, normally to a supposed trading platform controlled by the scammers.

Santander also never asked what it was Mrs W was specifically investing in, why she was confident in putting in so much money so quickly, or what returns she was seeing on money already invested. All of these are important questions which could have seen the scam revealed. And I don't consider this to be an extreme level of questioning or requiring significant levels of investigation from Santander. Instead, they represent fair and reasonable responses to the clear identification of a well-known scam risk.

It's also noteworthy that Santander never clearly explained to Mrs W what cryptocurrency scams typically look and feel like, how they might start, what scammers might say, or how the supposed investments are typically set up and structured. These are steps Santander ought fairly and reasonably to have taken given the hallmarks of a cryptocurrency investment scam it could see based on the information it did have at the time. Instead, there are only ever some fragmented pieces of information, never fully explained, passed to Mrs W across the calls. And I believe it's fair to say that when these pieces of information are given over, there is a lack of seriousness or risk attributed to them by the staff speaking to Mrs W.

I've also considered some of the other responses Mrs W did give during intervention calls. There are some things she says that ought to have given Santander significant concern, including that she'd 'made a couple of deals this morning and made more money than I'd have in the bank' and that she was going to 'live off the profits', both suggesting she believed she was making very large returns very quickly. But there appears to have been no reaction from Santander to such concerning statements, at a time when it was meant to be actively looking for signs that Mrs W might have been at risk of financial harm through fraud.

I also consider it would have been reasonable to require Mrs W to attend branch, at least by the time she was attempting the £17,000 payment on 22 March 2022, such was the evident scam risk by that point. It's more likely than not such a conversation would have been more involved, and Mrs W would have realised the seriousness of the situation. It would also have afforded Santander the opportunity to invoke the Banking Protocol, depending on her responses, and the police would then have become involved.

I've established then that Santander made errors in that it never properly responded to the scam risk. In making my findings here I have taken account of the responses Mrs W gave when she was questioned about various payments. It's clear that she didn't tell Santander the full truth of what she was doing.

At times she was asked if anyone else was involved, including reference to an SME or a broker. Mrs W told Santander no such person was involved, and that she'd been introduced to investing by a friend. That wasn't true and, if Mrs W had revealed the full truth, Santander would have been in a better position to warn against the scam she was caught up in. But I remain satisfied there was still enough going on for Santander to have recognise the risks and to have gone significantly further than it did. And Santander ought to have been aware at the time that victims will be encouraged to give false explanations to avoid detection, and it ought to have had measures in place to mitigate against that. Asking who the friend was, or how Mrs W was picking her investments would more likely than not have set Santander on the road to discovery.

The question then is whether proper intervention from Santander would more likely than not have made a difference. I'm satisfied it would have.

It's clear Mrs W was completely drawn in by the scammers. Considering that, alongside her responses to Santander's questions, I can see why our investigator reached the conclusion she did. But it's important to consider that Mrs W never received any appropriate warnings or scam education as she should have done. She didn't have any idea how these scams functioned and wasn't offered the parallels between her situation and those scams. Had that happened, as it should have regardless of the answers she had given, I'm persuaded Mrs W would have responded positively. Mrs W's only concern with Santander was that it might not

want to lose her custom, with her funds to be invested elsewhere. She didn't have any other reason to distrust what Santander might have told her. Instead, Santander's failure to properly question her and to explain the scam risks left her unable to connect the dots and to be able to see what was wrong with the situation she found herself in.

With all the above in mind, I'm satisfied Santander could and should have done more and that its failure here has led to Mrs W's loss. It's then fair and reasonable that it compensates her for that loss.

I do also have to consider Mrs W's own actions and whether they were reasonable throughout. Santander clearly thinks they weren't. And I've already discussed this consideration with Mrs W. Whilst I recognise there was a degree of sophistication to the scam – with the convincing fake trading platform, professional sounding 'staff', and the seemingly legitimate Martin Lewis advert – I'm persuaded there was enough going on that Mrs W ought to have been sceptical of what was being promised. That starts from the point at which she was being persuaded to invest, when she was told she could double or triple her money in such a short window. Such returns do sound improbable and ultimately too good to be true. But it doesn't seem as though there were many checks carried out by Mrs W to ensure all was as it seemed.

Furthermore, and as discussed above, it is the case that Mrs W wasn't honest with Santander about what she was doing. And that did restrict its ability to protect her. This ought fairly and reasonably to be considered when thinking about the compensation she is due.

Mrs W accepts these points and has agreed with my finding that a 50% reduction to her compensation is fair and reasonable. That then accounts for both Santander's and Mrs W's actions over the course of the scam.

Putting things right

On Mrs W's acceptance Santander must:

- Reimburse 50% of Mrs W's loss from the payment of £10,000 on 18 March 2022; *and*
- Pay interest on that sum at 8% simple per year, calculated from the date of loss to the date of settlement. In making this interest award I'm conscious that the source of funds lost is varied. It includes money from a loan and funds from the marital assets. There's no doubt that the money has all been lost, and that Mrs W and her husband have been deprived of the use of those funds elsewhere. I'm satisfied that the money could otherwise have been used in a variety of other ways, especially considering Mrs W's husband's inability to work due to illness, and the need for repairs and maintenance to the marital home which haven't been able to take place because of the scam.

My final decision

I uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 5 December 2024.

Ben Murray
Ombudsman