

## The complaint

Ms S complains that Santander UK Plc (Santander) won't refund her money she lost in an investment scam. Ms S is represented by a third-party, but I'll refer only to Ms S for ease of reading.

## What happened

The circumstances surrounding this fraud are well known to the parties, so I'll summarise what I consider to be the key points.

Ms S says she was told about an investment by a friend. Ms S says she did a large amount of research online, reading articles and watching videos. She questioned her friend and was provided with extremely positive feedback. She was persuaded to invest by the high potential returns. She made the following payments from her Santander account:

Date	Method of payment	Destination	Amount
10/09/2021	Card payment	Own cryptocurrency account	£3,005.53
28/09/2021	Card payment	Own cryptocurrency account	£601.41
29/09/2021	Card payment	Own cryptocurrency account	£5,407.82
11/10/2021	Card payment	Own cryptocurrency account	£95.61
21/10/2021	Card payment	Own cryptocurrency account	£95.49
25/11/2021	Faster payment	Own cryptocurrency account	£7,500
26/11/2021	Faster payment	Own cryptocurrency account	£7,500
26/11/2021	Faster payment	Own cryptocurrency account	£25,000
29/11/2021	Faster payment	Own cryptocurrency account	£5,500

Ms S says she had two telephone calls with Santander, while she was attempting to make two payments, one for £7,500 on 25 November 2021 and the other for £25,000 a day later, but she says both calls were cursory. She says during both calls her 'sponsors' were online and were encouraging her to demand that she could do what she liked with her money. She says she told Santander she wanted to buy bitcoin so it could be used to purchase USDT to invest in a particular unregulated investment.

Once she had made the investment, its value grew, but Ms S had difficulty making withdrawals from her investment and so she started to be concerned. She says she realised it was a scam when the chat group she was part of, on a messaging platform for this investment, was taken down, which she attributed to the difficult questions that investors were asking.

Ms S raised her concerns with Santander in 2024, but it didn't refund her money. It said the transactions weren't covered by the Contingent Reimbursement Model (CRM) code. It also said the loss didn't arise from these transactions, which were from her Santander account to her cryptocurrency accounts, but from her cryptocurrency accounts, from which she had transferred money to the scammers.

Our investigator thought Santander ought to have queried the transaction on 29 September 2021 and if it had, she thought Santander would have uncovered the fraud. But she thought Ms S ought to bear part of the responsibility, because she didn't think Ms S had done enough to protect herself from the scam.

Santander says Ms S was transferring money to accounts held in her own name and there was no indication she might have been at risk of financial harm. The account activity wasn't unusual compared to past activity. Santander says it did intervene and is effectively being punished for not having retained recordings of the calls. It says it can say with certainty that proportionate questions would have been asked based on the situation and the customer's responses. Santander questioned whether the cryptocurrency provider ought to have prevented the payments, as it too was regulated by the FCA.

I issued my provisional decision on 29 November 2024 and explained why I considered Ms S's complaint shouldn't be upheld. I said:

*"There is no dispute that Ms S authorised the payments, even though she was tricked into doing so and was the victim of a cruel scam. I appreciate she didn't intend her money to go to scammers. Under the Payment Services Regulations 2017, she is liable for the loss in the first instance. But the matter doesn't end there.*

*The CRM code doesn't apply to payments made by debit card, nor to payments sent between accounts belonging to the same customer, but taking into account the law, regulatory 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, 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.*

*There's very little evidence, beyond Ms S's version of events, to show the payments made from Ms S's Santander account have been lost in a scam. If I accepted that this particular investment was a scam, I can see very little to show the payments sent from the Santander account ended up in this particular investment. I can see that the payments were made from Santander to legitimate accounts Ms S held with other payment service providers, but there is little to show they were moved on from those accounts to the investment in question. At present, it's not clear whether some or all the money from the Santander account was invested and whether there were any returns. Even if I accepted this was a scam and Ms S made an investment using money transferred to her cryptocurrency accounts from Santander, it's not clear how much was invested and whether there were any returns. On that basis, I'm not persuaded it's reasonable to uphold Ms S's complaint.*

*Even if I accept the scam took place in the way Ms S describes and all the money she transferred from her Santander account to her other accounts was invested in this particular investment, I'm not persuaded Santander is responsible for her loss.*

*There is limited evidence available in this case, but it is clear Santander did intervene, on more than one occasion. It held the payment of £7,500 made on 25 November 2021 and the payment of £25,000 on 26 November 2021. While our investigator thought Santander should have intervened earlier, it isn't clear that earlier intervention would have prevented Ms S's loss.*

*Santander says it can be certain the conversations contained proportionate questions, but it has not explained its basis for such certainty, given the lack of evidence about the content of the calls. Ms S says, on both occasions, her sponsors were on-screen and stayed silent but encouraged her to demand her rights to do what she wanted with her money. She also says she told Santander she wanted to invest in this particular investment because it was offering excellent returns. I'm mindful that Ms S is attempting to recall conversations from three years ago.*

*I consider Santander ought to have intervened. When it intervened, I consider it ought to have asked questions to find out what was happening, such as whether Ms S authorised the payments, what the purpose of each transaction was, and what the intended destination of each payment was, whilst giving tailored risk warnings based on the responses Ms S gave.*

*Based on the very limited detail about the content of the conversations between Ms S and Santander, it seems that Santander did establish that Ms S had authorised the payments, that she was transferring money to her account with cryptocurrency providers for onward investment and that she was attracted by the returns. So, it seems to me that Santander likely asked at least some of the sort of questions I would have expected it to ask and established some detail in those conversations, based on Ms S's account.*

*Ms S doesn't mention any risk warnings being given, but in my experience, it is usual for warnings to be given in such calls. The point of such calls is to try and detect, warn about and prevent fraud. Her recollection that she was encouraged to demand her right to do what she wanted with her money suggests to me that Santander might have questioned the investment and provided risk warnings. On balance, I consider it is more likely than not that some form of risk warning was given.*

*But even if further questioning and risk warnings could have been given, based on Ms S's recollections, I don't think Santander ought reasonably to have identified she was at risk of financial harm. She says she was introduced to the investment through a friend, who had also invested and was very positive about the investment, she did a large amount of research and was persuaded this was a legitimate investment. If she answered Santander along those lines, there would have been little indication this was a scam. I'm also not persuaded she would have been put off by any warnings she might have been given, considering how enthusiastic she says she was about the opportunity and it seems that she might have been coached to deal with Santander's questions and warnings.*

*Overall, I don't have sufficient persuasive evidence of Ms S's loss, or that Santander did anything wrong, since it did intervene in these transactions and I find it more likely than not that it did provide risk warnings. I also consider further risk warnings are unlikely to have revealed the scam or deterred Ms S from investing."*

In response to my provisional decision, Ms S has provided a selection of screenshots from her investment account.

She also says she was vulnerable, the transactions were unusual and she told Santander the name of the company she was investing with. If Santander had checked the FCA website, it would have seen that there were warnings in place against the company she

invested with. Any properly tailored risk warning ought to have referred to the warning on the FCA website.

She says Santander has not provided any evidence of the call she had with it, which is unusual. She suggests that because of this, I ought to prefer her evidence about what happened. Ms S adds that the person she spoke to at Santander said they were considering investing in cryptocurrency too and this amounted to an endorsement of the investment she was making.

Ms S says I stated in my provisional decision that it is unusual for warnings to be given in calls and she suggests this conflicts with my stance that Santander ought to have given tailored warnings. She says it follows that if I accept it is sensible practice to provide these warnings but it is rare for a bank to make them, then it follows that it is more likely than not that Santander gave no warning or an inadequate warning.

She added that Santander should have questioned the source of funds and would have found they came from a mortgage and this should have rung further alarm bells.

Santander didn't comment on my provisional 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.

I said, in my provisional decision, that there was little evidence beyond Ms S's version of events, to show that the payments made from her Santander account have been lost in a scam.

The evidence recently provided doesn't really change my view on that point. It appears to show Ms S had an investment account, but it doesn't show how much was added to the investment account and when. Amongst the previously provided evidence, there are some screenshots showing amounts that are described as relating to "academy packs", which may relate to deposits, but this is not clear. There still appears little to show a link between the funds moved from Santander and any money used to fund this investment. The evidence I have shows Ms S made payments from her Santander account to other accounts in her own control, but it doesn't show that the money was moved on from those accounts into this investment. While I do have regard for Ms S's recollections, I remain of the view that there is insufficient evidence to show these payments from Santander are connected to Ms S's loss or how much her loss might be and how much, if any, of the money moved from Santander was lost in this investment. I don't uphold the complaint because of this.

Whilst not strictly relevant to the outcome, I shall address some of the additional points raised by Ms S.

Where evidence is limited, I consider what in my view is most likely to have happened, based on the available evidence.

It appears no call recording remains due to the length of time between the calls taking place and the reporting of the scam. I have placed some weight on Ms S's recollections, but I have also borne in mind she is attempting to recall conversations from around three years earlier.

I cannot find earlier reference to Ms S saying a member of staff at Santander had told her they were considering investing in cryptocurrency. In any event, I don't consider this could reasonably be taken as an endorsement of the particular investment she was making.

Ms S may have misread my provisional decision. In it, I said it was, in my view, usual for risk warnings to be given in calls such as these, as the entire point of these calls is to try to detect and prevent fraud and to warn. I said that Ms S's recollection that she was encouraged by the scammers to demand her right to do what she wanted with her money was suggestive that Santander might have questioned the investment and provided risk warnings. On balance I found it more likely than not that some form of risk warning was given and I remain of that view. Ms S's recollections are that there was some discussion in which Santander established that she was investing money in cryptocurrency. In my experience it would be usual for a bank to provide some warnings about the risk of making such investments, particularly where it had flagged such transactions and engaged in a call with a customer and established they were investing in cryptocurrency.

In any event, as I said in my provisional decision, even if Santander could have provided better warnings, I'm not persuaded it ought to have realised she was at risk of financial harm from what she's told us or that it's more likely than not such warnings would have dissuaded Ms S from investing. She appears to have been persuaded to invest based on the experience of a trusted friend and having conducted her own research, which appears to have involved attending online presentations where many other investors also appeared to be present. She appears to have been convinced of the legitimacy of the investment, until relatively recently. If she had explained that a friend had invested and was very positive about it and that she had carried out research into the investment, this is unlikely to have caused Santander particular concern.

In those circumstances, I'm not persuaded it is more likely than not that she would have been dissuaded from investing or that Santander would have had sufficient reason to refuse to process the transactions.

Overall, for the reasons given above and in my provisional decision, I remain of the view that Ms S's complaint shouldn't be upheld.

### **My final decision**

I don't uphold Ms S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 5 February 2025.

Greg Barham  
**Ombudsman**