

## The complaint

Mr and Mrs S hold/held *what appears* to be a joint account with Santander UK Plc ("Santander").

Mr and Mrs S's complaint is about Santander's refusal to reimburse them money they say they lost due to a scam.

Mr and Mrs S are represented by Mendelsons Solicitors in this matter. However, where appropriate, I will refer to Mr and Mrs S solely in this decision for ease of reading.

## What happened

The circumstances of this complaint are well known to all parties concerned, so I will not repeat them again here in detail. However, I will provide an overview of events.

Mr and Mrs S say they have fallen victim to cryptocurrency related investment scam. They say they were deceived by fraudsters into making payments towards what they thought was a legitimate investment with a company called, Cash FX.

Below is a list of relevant payments in this matter, which were fund transfers to SwissBorg. However, it is only Payment 2 which Mr and Mrs S appear to be disputing:

Payment Number	Date	Amount
1	28 December 2021	£260
<b>2</b>	<b>1 March 2022</b>	<b>£4,800</b>
	3 March 2022	£4,795.20 (credit from SwissBorg)
3	4 March 2022	£100
4	4 March 2022	£4,830

Mr and Mrs S disputed Payment 2 with Santander. When it refused to reimburse them, they raised a complaint, which they also referred to our service.

One of our investigators considered the complaint and did not uphold it. As Mr and Mrs S did not accept the investigator's findings, this matter has been passed to me to make a decision.

It should be noted that Mr and Mrs S also made payments towards the scam from a joint account they hold/held with NatWest. They have raised a separate complaint about this.

### **What I have 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 find that the investigator at first instance was right to reach the conclusion they did. This is for reasons I set out in this decision.

I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

### **Contingent Reimbursement Model (CRM) code**

It appears that the funds from Mr and Mrs S's Santander account went to a SwissBorg account in their names. And then, as Mr and Mrs S say, the converted cryptocurrency was sent to the fraudsters.

For these reasons, the CRM code does not apply in this matter.

### **Regulatory framework**

The regulations which apply in this matter are the Payment Services Regulations 2017 ("the PSRs").

### **Should Santander have recognised that Mr and Mrs S were at risk of financial harm from fraud?**

It is not in dispute that Mr and Mrs S authorised the payment transaction in this matter. Generally, consumers are liable for payment transactions they have authorised. However, that is not the end of the story. This is because even if a payment is authorised, there are regulatory requirements and good industry practice which suggest firms – such as Santander – should be on the look-out for unusual and out of character transactions to protect their customers from financial harm. And, if such payment transactions do arise, firms should intervene before processing them. That said, firms need to strike a balance between intervening in a customer's payment to protect them from financial harm, against the risk of unnecessarily inconveniencing or delaying a customer's legitimate transactions.

I have borne the above in mind when considering the payment transaction in this matter.

### **Payment 2**

I am persuaded that Payment 2 was unusual and out of character. I say this primarily because this transaction was cryptocurrency in nature, and relatively high in value and does not appear to be in-line with spending on the account. Given this, I think there was an identifiable risk. Therefore, Payment 2 should have triggered Santander's fraud detection systems; prompting it to intervene before releasing the transaction to try to protect Mr and Mrs S from financial harm.

I am mindful of the fact that Payment 2 was made in 2022. I have taken this together with the aggravating factors present. In doing so, my view is that a proportionate intervention to

the risk identified would have been for Santander to provide Mr and Mrs S with a written warning that broadly covered scam risks.

I acknowledge that the investigator thought that Payment 2 should not have triggered. Whilst I have not reached the same view on this point, I do agree with the investigator that ultimately, this complaint should not be upheld. I give my reasons below.

**If Santander had provided a written warning of the type described, would that have prevented the losses Mr and Mrs S suffered?**

As I have taken the view that Payment 2 should have triggered an intervention by Santander, I must now turn to causation. Put simply, I need to consider whether Santander's failure to intervene caused Mr and Mrs S's losses. To do this, I need to reflect on whether such an intervention would have likely made any difference. Having done so, I am not persuaded that it would have. I take the view that, on the balance of probabilities, Mr and Mrs S would have frustrated Santander's attempt to intervene to protect them from financial harm – thereby alleviating any concerns Santander had.

**WhatsApp messages**

I have seen WhatsApp messages from a group chat – members of which appear to be investors of the scam (including Mrs S). The date range of the messages is: July 2020 to November 2024. The earliest WhatsApp message I can see from Mrs S is on 12 October 2021 (so before Payment 2). I have considered Mrs S's messages in this group chat to give me some insight into her state of mind at the time – particularly when considering how she and/or Mr S would have likely responded to a written warning when Payment 2 was made.

From what I can ascertain from the messages, it appears that the group members only started to realise they had been scammed in about late 2023. Up until that point, Mrs S appears to still believe everything was above board. For example, during the period mentioned, Mrs S discusses in the group chat, amongst other things, meetings, trades and expresses her excitement about the scam. I found these two messages from Mrs S particularly striking: "*Can't wait to get stuck into this, we have barely touched the surface my kids are really getting geed up xx*" (26 October 2021); and "*Dave can you introduce a 17 year old ??*" (3 November 2021). Further, having considered Mrs S's messages just days after Payment 2, she shows no signs of having any concerns.

To my mind, the above shows that Mrs S, and no doubt Mr S, were very much under the fraudsters' spell before and after Payment 2 (until at least late 2023). This proposition is supported by the fact that after Payment 2 – Payments 3 and 4 were made.

***In summary***

For the above reasons, I find that had Santander intervened in Payment 2 to try to protect Mr and Mrs S from financial harm (in the way described above): it is likely Mr and Mrs S would have frustrated this intervention – thereby alleviating any concerns Santander had. I find it unlikely that a written warning that broadly covered scam risks would have broken the spell Mr and Mrs S were under at the time.

**Recovery of funds**

Mr and Mrs S made their last payment from their Santander account to the scam in October 2021. The scam was reported to Santander in 2024.

The likelihood that even if prompt action had been taken by Santander on or immediately

after when the scam was reported, any of the money transferred would have been successfully reclaimed, seems slim. I say this because of the time that had elapsed between the last payment and when the scam was reported. In these types of scams, fraudsters tend to withdraw/transfer out their ill-gotten gains immediately to prevent recovery.

Further or alternatively, as the payments were made to purchase cryptocurrency – which would have been forwarded on in this form – there would not have been any funds to recover.

So, I am satisfied that it is unlikely Santander could have done anything to recover Mr and Mrs S's funds.

### **Compensation for distress and/or inconvenience**

I have considered whether an award for distress and/or inconvenience is warranted in this matter. Having done so, I am not persuaded that it is. I have not found any errors in Santander's investigation. Any distress and/or inconvenience Mr and Mrs S has suffered is a result of the fraudsters' actions – not Santander's.

### **Conclusion**

Taking all the above points together, I do not find that Santander has done anything wrong in the circumstances of this complaint. Therefore, I will not be directing Santander to do anything further.

### **My final decision**

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 18 April 2025.

Tony Massiah  
**Ombudsman**