

## **The complaint**

Ms W complains that Santander UK Plc (“Santander”) have failed to refund £189,199 she lost to an investment scam.

## **What happened**

The details of this complaint are well known to both parties, and the investigator has previously set out a comprehensive overview, so I won’t repeat everything again here. Instead, I will provide a brief summary and focus on giving the reasons for my decision.

Ms W fell victim to a cryptocurrency investment scam in March 2021. She was encouraged to open multiple cryptocurrency wallets by scammers purporting to be investment brokers. Over the next six months, Ms W made multiple large payments to her crypto wallets collectively totalling over £290,000, where her funds were subsequently transferred on to the scammers.

Santander chose to refund £103,500 to Ms W under the Contingent Reimbursement Model (CRM) Code but said it would not refund the payments she paid to Binance and Crypto.com, totalling £189,199. The bank said it had warned Ms W of the risks associated with fraud and scams when it questioned her about the payments and didn’t think it could have done anything more to have stopped the fraud.

Our investigator didn’t uphold the complaint. He considered the extent to which Santander questioned Ms W about the payments she was making and didn’t think it could’ve done anything further to have prevented her loss. Ms W disagreed, so the matter has been escalated to me to determine.

## **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 agree with the conclusions reached by the investigator and have decided not to uphold it. I’ll explain why.

Ms W’s representative has made a considerable number of submissions about her complaint, and I’d like to assure all parties that I have read and considered everything they’ve sent in. However, I don’t intend to respond in similar detail. I have set out the reasons for my decision in the paragraphs below, but if I don’t mention a particular point or piece of evidence, it isn’t because I haven’t seen it or thought about it. Instead, it’s just that I don’t feel the need to reference it in order to explain my decision. This isn’t intended as a discourtesy – it’s just a reflection of the informal nature of our service.

First, Santander has already agreed to refund seven of the fifteen disputed payments Ms W made as part of the scam. As such, the focus of my decision will be on the remaining payments Ms W made to both Binance and Crypto.com that Santander has chosen not to refund. In terms of these payments, it’s worth noting that Santander are under no obligation to refund them under the CRM Code, as the Code does not apply to payments which the

payer has effectively made to themselves (which would have been the case here given they were made to Ms W's own crypto wallets before being moved on to the scammer). However, I've considered whether there is any other basis for Santander to be held liable for Ms W's remaining loss.

It isn't in dispute that Ms W has fallen victim to a scam here, nor that she authorised the disputed payments she made to her crypto wallets from her Santander account (where her funds were subsequently transferred on to the scammers from those crypto wallets). The payments were requested by her using her legitimate security credentials provided by Santander, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether Santander should have done more to prevent Ms W from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

It isn't in dispute that some of the payments Ms W made were unusual given that they did trigger Santander's fraud prevention systems and were automatically blocked pending further enquiry – such as the £25,000 payment made on 18 August 2021, as well as the £30,000 payment she made on 24 August 2021. Accordingly, it's just a question of whether the bank went far enough in all the circumstances with its intervention.

When Santander spoke to Ms W on 18 August 2021, she said that she was buying furniture with cryptocurrency, but she refused to disclose the name of the company she was dealing with. She didn't disclose that she was being advised by a third-party when asked, and neither did she say she was making an investment. Santander proceeded to warn Ms W that fraudsters were posing as brokers who would encourage victims to open cryptocurrency wallets, which they would take control of. It also asked if anyone had helped set up her crypto wallets, to which she said they hadn't. Santander also asked Ms W if anyone had told her what to say if she was questioned about the payment, to which she also said they hadn't. Ms W gave similar answers when she spoke to Santander again on 24 August 2021.

Having considered the questions Santander asked during their interventions – as well as the responses given by Ms W – I'm not persuaded there was anything further the bank could have done to prevent her falling victim to the scam. Ms W said that she had not been assisted by a third party in opening her crypto wallets, and that no one had told her to mislead the bank, despite this being the precise scenario she was in. I can see that she also expressed frustration to the bank about not being able to spend her money in the way she wanted, and assured it that she was happy to proceed with the payment.

Santander gave Ms W clear warnings that were relevant to the scam she was falling victim to. I think it asked appropriate questions of her, which were ultimately led by the answers she gave. If she had answered the questions accurately and said she was in contact with a third-party broker that had encouraged her to open crypto wallets, then I accept it would have been incumbent on Santander to maintain suspicion about the payments and to probe further into the circumstances. But seeing as Ms W was not forthcoming with these details, I don't think there was any failing on Santander's part to probe any further or to have stopped the payments altogether. Ms W confirmed on more than one occasion that no other third-party was helping her or involved in the transactions and said that no one had told her to mislead the bank. Santander also told her where to check online to see if she was potentially being scammed, but Ms W still insisted on proceeding with the payment.

Accordingly, there was no other significant reason for Santander to stop Ms W from spending her money in the way she wanted. I appreciate Ms W says she was vulnerable at the time, as she was suffering with her mental health. I'm sorry to hear about the difficult

time Ms W has gone though. But I can't see that Santander had been given prior notice of any vulnerabilities, or that there was any suggestion that she might have lacked capacity to make her own financial decisions at the time. As such, it wouldn't have been reasonable for Santander to refuse a payment mandate given by Ms W after she had assured it that she knew what she was doing, and that she wasn't falling for a scam.

Therefore, even if I were to accept that Santander *should* have intervened earlier, I don't consider it would have made any difference here. I'm not persuaded Ms W would have been upfront about what she was doing, as she wasn't when Santander spoke to her on all other occasions. So, there's no plausible basis on which to say the bank could have reasonably prevented or got to the bottom of the scam in such circumstances.

I appreciate this will likely come as a disappointment to Ms W, and I'm sorry to hear she has been the victim of a cruel scam. However, I'm not persuaded that Santander can fairly or reasonably be held liable for her outstanding loss in these circumstances, as the evidence suggests that it wouldn't have been able to uncover or prevent the scam.

### **My final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 21 August 2023.

Jack Ferris  
**Ombudsman**