

The complaint

Mrs V complains that Santander UK Plc (Santander) won't refund the money she lost when she fell victim to a cryptocurrency scam.

What happened

In early 2021, Mrs V was recommended a trading platform by someone from her church. She understood she would be making an investment whereby her trading platform would be credited monthly or daily, then she would be able to withdraw a lump sum after 18 months. She also says she was told she wouldn't lose any money.

Mrs V says she looked up the platform and it had positive reviews. When she set up an account, she could access a portal which she believed was showing the active trading. She was also added to a WhatsApp group with other investors and the owners of the company – who she thought seemed informative and professional.

Persuaded the platform was legitimate, Mrs V made several payments from Santander to an account she set up with a cryptocurrency exchange. She then bought cryptocurrency and sent it on to the trading platform.

In 2022, Mrs V started to hear rumours the platform might be a scam. She tried to withdraw her funds – and found she could not. Several people from her church fell victim to the scam, including the individual who made the recommendation.

When Mrs V raised this issue with Santander, it wouldn't agree to refund her. It said she had willingly sent the payments to her own cryptocurrency account. Mrs V referred the matter on to our service.

Our investigator didn't uphold the complaint. They said Santander acted reasonably in processing Mrs V's authorised payment requests; the case isn't covered by the Lending Standards Board's Contingent Reimbursement Model (CRM) code as it doesn't apply to card payments; and the loss couldn't have been successfully recovered through the chargeback scheme.

Mrs V has appealed the investigator's outcome. In summary, she says:

- There should be a flexible approach to chargebacks rather than a strict time limit.
- Banks need to safeguard customers even when payments are authorised and the CRM code doesn't apply. She disagrees the scam payments were similar to other payments she had made, as they had all been to reputable companies. Given banks' knowledge of cryptocurrency scams, Santander should have contacted her as she had never paid the cryptocurrency exchange before.

The case has therefore been passed to me for review by an ombudsman.

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've decided not to uphold it. I'll explain why.

As Mrs V authorised the payments, the starting position under the Payment Services Regulations 2017 is that she is liable for them – as Santander has a duty to exercise her authorised payment instructions without undue delay.

However, there are circumstances when it might be appropriate for Santander to take additional steps before processing a payment. Such as when there are grounds to suspect the payment presented a fraud risk. That might occur when a payment is significantly unusual or uncharacteristic compared to the normal use of the account.

I do appreciate Mrs V's point that she hadn't paid the cryptocurrency merchant before. But I don't think that in itself made the fraud risk obvious. The merchant she paid directly was legitimate; the fraudulent loss was incurred when she sent the funds on from that merchant.

However, she did overall pay a fairly significant amount to a new cryptocurrency payee over several payments. I've carefully considered whether Santander ought to have been concerned for that reason – as I agree it ought to have been aware of the risks of cryptocurrency scams. Overall, I don't think the account activity was so significantly unusual or worrying that Santander can be held at fault for not looking into the payments further.

This is because Mrs V did have a history of making payments for similar, and higher, amounts. And of making multiple payments to payees in quick succession. While I understand the distinction she has drawn between the scam payments and other spending on her account, the overall activity will have fed into Santander's view of what to expect from her account. In all the circumstances, I consider it reasonable that Santander simply processed her authorised payments. And so I don't think it's at fault for not uncovering the scam at the time.

I agree with our investigator that Santander didn't miss an opportunity to recover the funds either. I understand Mrs V's frustrations about the limitations of the chargeback scheme. But the rules of the scheme are outside Santander's control. They are set by the card scheme provider.

And regardless of the time limits, the scheme could only have considered a dispute against the merchant Mrs V paid directly – who were legitimate and provided the expected service by crediting the funds to her cryptocurrency wallet. Her dispute is about the platform she transferred the funds on to. And that falls outside the scope of the chargeback scheme.

In saying all of this, I'm conscious Mrs V has lost out to a cruel and sophisticated scam. But in the circumstances, I'm not persuaded there are reasonable grounds to hold Santander liable for her loss stemming from these payments.

My final decision

For the reasons given 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 Mrs V to accept or reject my decision before 28 December 2023.

Rachel Loughlin
Ombudsman