

## The complaint

Ms P complains that Santander UK Plc ('Santander') won't refund the money she lost in a scam.

## What happened

Ms P is represented in this case but for ease I'll refer to Ms P throughout this decision.

In October 2021 Ms P says that she did some research into cryptocurrency investing. Soon afterwards, Ms P received a call from someone who said he was from a company I'll refer to as G in this decision. Ms P was told that G was an established investment company that specialises in cryptocurrency. She then received an email from G with a link and recalls being able to see live trades on G's website.

The sign-up process didn't seem to be working properly and Ms P was advised to download a screen sharing app to get support. After reading through testimonials Ms P invested funds under the direction of an agent of G. Ms P could see her profits rise and this persuaded her to continue to invest. I have set out in the table below the payments Ms P made.

Date	Amount	Recipient
29/10/21	£220	1
04/12/21	£1,039.18	2
14/12/21	£735.78	2
15/12/21	£370.54	2
15/12/21	£361.92	2
16/12/21	£748.95	2
16/12/21	£364.81	2
<b>Total</b>	<b>£3,841.18</b>	

All payments were made by card and recipients one and two are two different cryptocurrency exchanges. I can see further payments to recipient two on Ms P's bank statements, but these don't form part of the claim brought by her representative.

Ms P was then asked to invest more. She explained that she couldn't afford to pay more and asked to withdraw her funds. The withdrawal was delayed for various reasons and then Ms P started to experience difficulties in logging on to G's platform. She realised she was the victim of a scam and contacted Santander in February 2022. Initially though, Ms P only reported the first transaction of £220. She later instructed a legal representative to complain to Santander about the other payments listed in the table above.

### *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. He said that the Lending Standards Board's Contingent Reimbursement Model Code (the CRM

Code) doesn't apply in this case because it doesn't cover card payments. He also felt that as Ms P received the service she expected from the cryptocurrency exchanges, chargeback wouldn't be successful. Finally, the investigator said there was no reason for Santander to flag the payments Ms P made given their value and her previous account history.

Ms P didn't agree with the investigator's findings. In summary, she said the payments were unusual and Santander should have intervened because:

- Previous higher value card transactions from her account were for university fees (which Ms P had previously paid). Aside from these payments she does not usually make payments for more than £300.
- The value of the transactions isn't the only consideration. The scam transactions nearly depleted the balance of the account when Ms P usually maintained a healthy balance. The fact she was using the majority of her funds to buy cryptocurrency ought to have concerned Santander.
- She received high value credits just before the scam transactions.
- Santander should have been aware of the prevalence of cryptocurrency scams and noticed Ms P was using her account differently.

### **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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment. 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.

This was a cruel scam and I'm sympathetic towards the situation Ms P finds herself in. But she isn't automatically entitled to a refund from her bank.

I've considered whether the payments Ms P made during the scam were so unusual or out of character that Santander ought reasonably to have intervened to establish whether she was at risk of financial harm. Having carefully considered the matter, I agree with the investigator that Santander acted fairly in processing Ms P's payment requests.

It's clear from a review of Ms P's bank statements that shortly before the scam transactions she made card payments that exceeded those in the table above. On 12 August 2021 Ms P made two card payments – for £2,496 and £1,427.20. The highest value scam transaction was for £1,039.18, which is less than the smaller transaction on 12 August and significantly less than the larger one. In the circumstances, I'm not persuaded Santander ought reasonably to have had any concerns about Ms P's payment requests. I've also taken into consideration the fact that the scam transactions spanned almost a seven week period and didn't follow a usual pattern of scam transactions.

There's a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. Whilst banks have obligations to act in their customers' best interests, they can't reasonably be involved in every transaction.

I appreciate that the reason for the payments in August 2021 was different to the scam payments, as was the payee, but I'm not satisfied that there was enough going on that Santander ought reasonably to have done anything more. It's clear the scam transactions were unremarkable as they were in line with Ms P's previous account history and all scam transactions were to a legitimate company.

Ms P has referred to the fact Santander should have done more because the scam payments depleted the balance in her account. I accept that Ms P's balance reduced over the period of the scam but none of the listed scam payments took her balance below £400.

I also agree with the investigator that Ms P had no chargeback rights and in any event chargeback wouldn't be successful.

Overall, whilst I'm very sorry Ms P has lost money in this cruel scam, I can't reasonably ask Santander to reimburse what she has lost.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 4 December 2023.

Jay Hadfield  
**Ombudsman**