

The complaint

Mr G complains that Santander UK Plc (Santander) won't refund the money he lost in a scam.

What happened

Mr G says he made the following payments as part of an investment scam.

Date	Amount	Payee	Method
26/11/20	£1,026.50	D	Online
30/11/20	£2,050	D	Online
07/12/20	£5,250	D	Online
15/12/20	£16,000	D	Online
12/01/21	£12,100	International	Telephone banking
Total	£36,426.50		

He says that an online friend advised him of an investment opportunity that involved trading in currencies but later found out this was a scam. The scammer gave Mr G access to her trading account while she was on holiday and he saw that profits could be made. Mr G thought the funds he was sending were going to a trader who exchanged them to dollars and credited his trading account. Initially Mr G tried to make a card payment to D, but it was blocked, and he spoke to Santander. He says he was told Santander had completed checks and it was safe to make the payment, so Mr G then completed online transfers.

The trader also introduced Mr G to her aunt and uncle and Mr G received trade tips from the aunt each day. Mr G had access to an online trading account that looked like it was making good money.

On 4 January 2021 Mr G called Santander and said he thought he might have made payments as part of a scam but later that day called to say he'd checked and now thought the company was genuine. Mr G was given advice about checking the FCA register.

Mr G's online friend then persuaded him to make an international payment to the details he was given for a different investment opportunity. At this stage Mr G says he thought his online friend and the broker – D – weren't connected and he still trusted his online friend. Santander blocked the payment and spoke to Mr G about it, but Mr G doesn't think Santander went far enough. Mr G said later said he thought the final international payment was a scam payment, but the others were genuine.

Mr G would like Santander to refund everything he lost in the scam. He says Santander failed in its duty to protect him and that in the calls he had when payments were made Santander didn't provide him with scam warnings or explain how bank transfers work and the difficulty in retrieving funds sent by this means. Mr G also says that he would never have sent funds if Santander hadn't told him that it was safe to do so when his first card payment

to D was blocked. Santander did though stop the next payment to a new account saying it wasn't safe to send funds to that account.

Mr G is also unhappy that his account was blocked after the scam was reported and with the problems he experienced as a result. Although Santander say his account was unblocked on 2 February 2021, Mr G says he wasn't aware this was the case until a telephone conversation about his complaint on 9 February.

Santander considered Mr G's complaint under the CRM Code and hasn't provided a refund. It said Mr G authorised the payments and Santander provided scam warnings tailored to the stated payment purpose of paying friends and family on each occasion. These warnings were provided online for the payments made via this method and in a telephone conversation in respect of the international payment. Santander also said Mr G didn't complete sufficient checks to ensure the investments were genuine before making the payments and relied on what he'd been told by someone he met online. Santander did what it could to recover Mr G's funds but had been unsuccessful. Finally, Santander said there was no evidence it advised Mr G it was safe to send funds to D.

Our investigation so far

The investigator who considered Mr G's complaint didn't recommend that it be upheld. He concluded that The Contingent Reimbursement Model (CRM) Code doesn't apply to the payments Mr G made and went on to consider whether Santander should have prevented them from being made. The investigator didn't think the first three payments were unusual or out of character so didn't consider Santander should have had concerns about them. The fourth payment of £16,000 was for a larger amount but Mr G was by then paying an established payee and the payments weren't made in quick succession. But in any event the investigator felt that even if Santander had asked questions about this payment Mr G would have gone ahead and made it.

In respect of the international payment of £12,100 the investigator noted that Mr G wasn't truthful with Santander about the reason for this payment as he said it was for a friend. Also, this payment was made after a conversation with Santander in which a scam claim about the same investment scam was started on 4 January 2021.

The investigator wasn't persuaded that Santander told Mr G it was safe to send any of his funds as Mr G suggested and also commented that it wasn't for Santander to verify if the investments were genuine.

Finally, the investigator said that although Santander hadn't contacted the receiving banks as soon as it should have this hadn't affected any potential recovery. The receiving bank for the payments to D confirmed that it was a business account and provided evidence that all Mr G's funds (including the £16,000 payment Mr G said didn't arrive) were exchanged into USDT, a type of cryptocurrency, which was then available to Mr G on a trading platform.

Santander responded to the investigator's view and said its position remained unchanged. Mr G didn't agree with the investigator and asked for his case to be reviewed so it's been passed to me for a final decision. He said:

- He doesn't believe Santander protected him from loss.
- He considers the initial payment of just over £1,000 was unusual.
- He disagrees with the investigator's comment that he was blinded by profits and would have gone ahead with the payments anyway.

As Mr G was unhappy with the investigator's response his complaint was passed to me to consider. I issued a provisional decision on 3 August 2022. In the 'What I think – and why' section I said:

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; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

CRM Code

When considering what is fair and reasonable in this case, I've also thought about the Lending Standards Board's voluntary Contingent Reimbursement Model (CRM Code), which Santander has signed up to and was in force at the time Mr G made the payments. I've thought carefully about if the CRM code applies in the circumstances of the payments Mr G made and, if so, whether Santander ought to reimburse him under the provisions of the CRM Code. International payments aren't covered by the CRM Code so I will consider this payment separately.

The payment journey in this case is a complex one as Mr G's funds went from his account with Santander to D. D exchanged Mr G's funds to cryptocurrency and then transferred them to a genuine trading platform I'll refer to as A. From this platform funds were transferred to a trading account which seems to be fake.

On balance, I believe that Mr G lost control of his funds at the point he transferred them to D and so the CRM Code applies in this case. I say this because after completing some research it's clear that D was registered on Companies House as an information technology company, not an investment company or currency exchange company. And information from D's bank says that it didn't support the activity of exchanging funds into cryptocurrency.

I have also seen evidence that D moved the cryptocurrency to an account in Mr G's name at A. When D did so, it notified Mr G of this and Mr G let the scammer know so that funds could be transferred on from A to trade. I'm not persuaded Mr G ever had control of the account with A though. He has explained that the scammer provided him with a username and password for the account but that when he tried to use the information to log in, he was unable to do so.

Given the points I have made above, I consider the CRM Code applies in this case.

There's no dispute here that Mr G was tricked into making the payments. But this isn't enough for him to receive a refund of the money under the CRM Code. The Code places a level of care on Mr G too.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:*

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning*
- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate*
- The customer has been grossly negligent*

**The two further exceptions outlined in the CRM Code do not apply to this case.*

Effective warnings

The CRM Code says that where firms identify authorised push payment scam risks in a payment journey, they should take reasonable steps to provide effective warnings (as set out in the CRM Code) to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

I don't consider Santander was required to provide Mr G with a warning when he made the first two payments. These payments were relatively low in value and I don't believe there was anything about them that should have concerned Santander.

The position is different in respect of the third payment (£5,250 on 7 December 2020). I consider that Santander should have provided Mr G with a warning when this payment was made. I've not seen any evidence that a warning was provided but think it likely that even if one was it was the same warning Santander provided when Mr G made the next payment of £16,000. I've explained below why I don't consider this was an effective warning under the CRM Code. If Santander provided a different warning for this payment that it believes was effective under the CRM Code, it should provide details in response to this provisional decision.

I turn now to the fourth payment (of £16,000) on 15 December 2020. Santander say it provided a warning at the time the payment was made. The warning was based on the payment reason given by Mr G, which was that it was a payment to friends and family, and said,

"If you have been asked to transfer money or are unsure about the payment you are making please do not complete the request."

I'm not satisfied I can reasonably conclude that the requirements of the effective warning exception were met. I don't think the warning was impactful or specific enough. The warning didn't bring to life common features of the scam or how a customer might protect themselves. I also think that if Santander had explained the consequences of continuing with an irrevocable payment Mr G's decision-making would have been affected and he'd have taken additional steps to protect himself.

Overall, I'm not satisfied that a reasonable person would fully understand the scam risk from the warning Santander gave. And as an effective warning wasn't given, I can't reasonably conclude that Mr G ignored such a warning.

As I don't think Santander has been able to establish Mr G ignored any effective warnings in respect of the £5,250 and £16,000 payments, as a starting point I think it's liable for 50% of these payments under the CRM Code.

Reasonable basis for belief

I've gone on to think about whether Mr G had a reasonable basis for believing he was investing in a genuine investment and paying a genuine payee. I've considered what steps he took to reassure himself about the legitimacy of the investment, and whether it was reasonable for him to proceed with the payments.

Taking into account all of the circumstances of this case, including the characteristics of Mr G and the complexity of the scam, I think the concerns Santander has raised about the legitimacy of the transaction Mr G made are enough to support its position that he failed to meet his requisite level of care under the CRM Code for the payments he made. I don't think he had a reasonable basis for believing the payments were for genuine services or that the person he transacted with was legitimate. I'll explain why.

- Mr G was approached by someone he hadn't met on social media and decided to invest based on what he was told. Social media isn't a normal platform for legitimate investments and there was nothing to say the person Mr G communicated with was qualified to provide advice.*
- Mr G wasn't provided with any documentation about the investment. At a later date he could see how his investment was doing on what he now believes to be a fake trading platform. There was no identification process, no contract and nothing to say what Mr G had agreed with the individual he met on social media.*

- Mr G didn't complete any checks to satisfy himself it was a legitimate investment opportunity. He has referred to looking D up at Companies House, but he told Santander he did this after he became aware he was the victim of a scam. And as I've said above, if Mr G had looked up D at Companies House he'd have seen that D was registered as being involved in information technology and not currency exchange or investments, so this should reasonably have caused him to be concerned. Given that Mr G has explained he invested his life savings I'm persuaded he should have researched the person he met on social media, D and what he was investing in.
- Although Mr G believed he was making an investment when he made payments he chose as the payment reason paying friends and family. I'm uncertain why Mr D did so, but if he was told by the scammer to lie to his bank this should have been a red flag to him. If the investment was genuine there would be no reason to give a false payment reason.
- The scammer told Mr G to make the second payment to a different payee (rather than to D). When Mr G called Santander to make the payment he was told that Santander had made a business decision not to send any funds to that account and that Santander had concerns about the account. Mr G then spoke to the scammer who advised him to make the payment to D. I think this interaction with Santander and the concerns Santander expressed about the payee should reasonably have resonated with Mr G and led him to take further steps to ensure he was making a genuine investment.

So I don't think Mr G had a reasonable basis for believing what he was told by the scammer(s). Under the CRM Code this means Mr G isn't entitled to any refund in respect of the first two payments he made but Santander is liable for 50% of the next two payments.

Mr G has told this service that he wouldn't have made any of the payments if Santander hadn't reassured him that it was safe to make the first payment to D. I've listened to the call recordings Santander has provided from this time and am not persuaded Santander told Mr G it had checked D and it was safe to make the payment.

I'm persuaded that Mr D was told that Santander needed to do a confirmation of payee check. Santander explained that such a check would confirm if the details matched. The security team then confirmed it was likely the payment didn't go through because they wanted to make sure it was Mr G who was making it because of the amount. The restriction was then removed because Mr G confirmed the payment was genuine, not because Santander had determined that it was safe to pay D.

International payment

The CRM Code doesn't apply to international transfers, so I've considered whether I think Santander acted fairly and reasonably when this payment was made. Santander should 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. For these reasons, Santander flagged this payment and had a conversation with Mr G about it.

I've been provided with a recording of Santander's first call with Mr G on 12 January 2021 when he said he wanted to pay £12,100 to a friend. In this call Santander said its online banking didn't allow international transactions to be made but the payment could be made over the phone. Mr G was told that Santander had extra security in place so the international payments team would call him back. The agent noted that Mr G didn't have sufficient funds to make the transfer and Mr G explained he would use his overdraft facility. As there was a charge for the payment Mr G was told he'd need to credit the account with £24 for the payment to go through.

Santander initially wasn't able to find a recording of the next call with the international payments team but sent this call when I started my investigation. Having listened to the call I don't consider Santander did enough. I'm persuaded Santander should have asked proportionate questions to satisfy itself Mr G wasn't at risk of financial harm. There are no set questions, but I consider that Santander should have asked what Mr G's friend needed the money for and how the money had been requested.

In the call Santander simply asked Mr G for a payment reason and then read a scam script appropriate to the given reason – paying a friend. The Santander agent then read a scam script that said,

"If you're making a payment to someone that told you they need money urgently this could be a scam. Please don't proceed with the payment if you're being pressurised to make a payment. Please consider our warnings. Are you comfortable to continue?"

So Mr G wasn't asked why a friend abroad needed £12,100. Given that Mr G had recently been told he was likely the victim of a scam in respect of his last payment to D I'd expect Santander to take additional care before processing another significant payment. There were a number of red flags here too like the fact Mr G was paying another new payee, was making an international payment and the payment cleared his account of funds. Mr G also said he was paying friends and family, which is what he'd said previously and would mean he'd sent a significant amount to friends and family in a short time period.

I consider that if Santander had asked Mr G further questions about the international payment the scam would have been uncovered and the payment wouldn't have been made. This is particularly so given that Santander identified scam risks when Mr G made the previous payment.

I've gone on to consider whether Mr G should also bear some responsibility for the loss of £12,100 and have concluded that he should. I refer to the reasons I have stated above about why Mr G didn't have a reasonable basis for believing the investment was genuine and also to the fact Santander told Mr G shortly before the payment that it thought Mr G was being scammed. This was during a call on 4 January 2021 when Mr G called Santander to check if funds sent on 15 December 2020 had been released to the beneficiary. Santander raised a scam claim during the call as it thought Mr G was being scammed.

Given this I consider Mr G should have exercised a high level of caution before trusting the same person and making a different investment. Mr G was on notice that he was likely to have been scammed but even then didn't complete any checks to ensure his funds were being invested legitimately. So I consider Mr G should receive 50% of the international payment.

Interest

I can see that Mr G transferred £5,250 into his Santander account from another account in his name before making the £5,250 payment to D. So I propose to award interest on the refund of 50% of this payment at the originating account rate. The payments of £16,000 and £12,100 were funded by transfers into Mr G's account from third parties, meaning any loss of interest isn't Mr G's. In the circumstances, I don't propose to award any interest on the 50% refunds in respect of these payments.

Santander responded to my provisional decision and accepted it. Mr G said he thought Santander should refund his loss in full. I've summarised Mr G's main points below:

- Santander caused him physical and mental stress which could have been avoided if it had properly protected him when he made the payments.*
- Santander failed to carry out a thorough review and only provided call recordings when I asked for them.*
- He had no investment experience so didn't know that what he was being offered was*

too good to be true.

- In respect of the international payment, Mr G referred to the fact the scammer told him to say it was a payment to a friend and he provided the investigator with proof of this.

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 carefully reviewed the responses I have received my final decision is that set out in my provisional decision (reproduced above).

I explained in my provisional decision that I didn't think Santander needed to provide warnings in respect of the first two payments as they weren't unusual and there was no obvious scam risk. I agree with Mr G that Santander should have done more to protect him when he made the subsequent payments. This is why I consider Santander should refund 50% of them.

I accept Mr G was an inexperienced investor so may not have known the deal he was offered by the scammer was too good to be true. But I highlighted other reasons why I felt Mr G should bear some responsibility for his loss in my provisional decision. For example, the fact that he was offered an opportunity to invest by someone on social media, was given no documentation and didn't complete any checks at all before transferring significant sums of money. So I still think Mr G didn't show the level of care required to receive a full refund of these payments under the CRM Code. Similar considerations apply to the international payment.

Finally, I've considered whether Santander should pay Mr G compensation for the distress and inconvenience he's experienced as a result of its actions. Mr G has referred to the distress suffered by his whole family. I should be clear that I can only consider Mr G's distress.

Mr G has said that Santander didn't adequately protect him when he made the payments and didn't investigate his later complaint properly. I've concluded that Santander didn't provide Mr G with effective warnings under the CRM Code when he made payments of £5,250 and £16,000 and didn't go far enough when Mr G made the international payment of £16,000. But I also need to bear in mind that Mr G wasn't truthful with Santander about the reason for each payment meaning that it was more difficult for Santander to protect him. And Santander followed the correct process in investigating Mr G's concerns and then referring him to this service if he was still unhappy. I appreciate Santander didn't provide call recordings of all relevant calls initially, but this complaint handling isn't something I can consider as part of my decision.

I consider that much of the distress and inconvenience Mr G has suffered was ultimately as a result of the actions of a cruel scammer and I can't hold Santander responsible for this. In all the circumstances, I'm not awarding anything more to Mr G.

My final decision

I require Santander UK Plc to:

- Pay Mr G 50% of the £5,250 and £16,000 payments (£10,625);
- Pay interest on £2,625 (50% of the £5,250 payment) at the rate applicable to the account the funds were transferred from.
- Pay Mr G 50% of the international payment (so £6,050), plus 50% of any

international payment fee charged in respect of this payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 14 September 2022.

Jay Hadfield
Ombudsman