

The complaint

Mr S complains that Santander UK Plc hasn't fully reimbursed him for the money he lost when he fell victim to a scam. He brings this complaint with the help of professional representation, but for clarity in what follows I will refer solely to Mr S.

What happened

Mr S explains he was contacted by someone on a popular social media website. After chatting over the course of several days, this person offered to teach Mr S to make money through trading in cryptocurrencies.

Mr S was helped to create an account in his name on two cryptocurrency exchanges. He was told to send money from one then transfer it onwards from there to the second.

In the course of the scam, Mr S began by making Faster Payments transfers from his Santander account as set out below:

Sequence	Date	Payee	Amount	
1	14 April 2022	A	£105	
2	16 April 2022	A	£400	
3	16 April 2022	B	£400	
4	18 April 2022	A	£150	
5	19 April 2022	A	£1,497	
6	19 April 2022	A	£1,510	
7	19 April 2022	A	£100	
8	21 April 2022	A	£3,030	Blocked by Santander – payment attempted but not sent

Payee account A appears to have been a limited company account, and B may be an account held by a trust. Neither payee account appears to have had any obvious connection to the cryptocurrency exchanges Mr S believed he was investing with.

He'd initially invested a small amount - the minimum he was told he'd need to start. Mr S says that his profits appeared to be increasing, and he was told that the more he put in the larger the profits he'd make. Being tempted by the projections he was shown he started to make larger investments. Unfortunately, he explains that he can no longer remember the returns he was being offered, but he recalls that within a few days he was told his profits had reached over £50,000.

On 21 April Mr S attempted to pay a larger sum, but this was stopped by Santander. During a subsequent call between Mr S and the bank the scam came to light. Santander attempted to recover Mr S's money but was unable to do so.

Santander is a signatory of the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code). The CRM Code provides additional protection when customers fall victim to Authorised Push Payment scams (APP scams) such as this one.

However, Santander didn't think Mr B had taken enough care before sending the payments – it didn't think he'd had a reasonable basis for believing this was a legitimate investment opportunity. It said therefore it didn't need to refund the relevant payments under the CRM Code.

Mr S was unhappy with this outcome and asked our service to review the matter.

Our Investigator considered everything Mr S and Santander had submitted. He didn't think Mr S had taken steps to look into who he was paying or to check he was making a genuine investment. So he agreed with Santander that Mr S hadn't had a reasonable basis for believing what he did when he sent these payments. But he thought Santander should have done more.

In particular he thought Santander ought to have given Mr S an Effective Warning under the CRM Code at the point of the payment six on 19 April (the sum of £1,510). Because it hadn't done so, he thought it was fair that Mr S and Santander should share equal liability from the point of this payment onwards. The Investigator recommended Santander should reimburse 50% of payments six and seven. As these payments had been funded from Mr S's overdraft facility, he said Santander should also reimburse Mr S any associated overdraft costs.

Santander accepted the Investigator's view and agreed to settle Mr S's complaint in line with these recommendations

Mr S didn't agree this settlement was fair. He thought he should be entitled to a full refund. He argued he'd been isolated and lonely, making him more susceptible to the scam, and that the lack of information he'd been given about the investment didn't mean he'd not held a reasonable basis for believing it was legitimate. He said Santander should have given a warning at the point of payment five, earlier than the investigator said it ought to have. So redress should apply from the point of that earlier payment.

In light of this disagreement, I've been asked to make a final decision on the matter.

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

Santander has a primary obligation to carry out the payment instructions its customers give it. As a starting point, a customer is therefore assumed liable for the payments they have instructed to be made. But that isn't the end of the story. In particular, as I've mentioned above, the CRM Code can provide additional protection where payments have been made as the result of an APP scam.

That being said, the CRM Code won't always require a firm to refund payments in full. In particular, it says a firm can choose not to fully reimburse APP scam losses where the firm can establish that the customer made the transactions without having a reasonable basis for believing what they did - including that they were paying who they expected to pay, and for a genuine service (here investment).

Where a customer couldn't reasonably be expected to have protected themselves against the scam that occurred, the CRM Code says the customer was vulnerable and the firm should reimburse in full regardless of whether that customer had a reasonable basis for believing what they did.

I accept that Mr S entered into this supposed investment on the basis that he'd been persuaded by someone he'd met online, and that he'd been lonely and so was more susceptible. But I don't consider the evidence supports a finding that he met the definition of a vulnerable customer under the CRM Code. The messages he's provided from the time do lead me to think he was unable to protect himself here. Rather, these suggest he'd identified concerns and show later he was capable of refusing to make further payments.

So, I do not find Mr S to have met the CRM Code's definition of vulnerability at the relevant time. Therefore, I have gone on to consider whether Mr S made the payments without having held a reasonable basis for believing he was paying who he thought he was and making a genuine investment. I have carefully considered everything Mr S has submitted as well as the evidence submitted by the bank.

There seems to be very little evidence available here to show anything about the investment Mr S believed he was making. He doesn't recall the returns initially offered but does recall that he appeared to achieve returns of over 1,000% profit within a matter of days. It doesn't appear he received any information that explained what he was investing in or how such exceptional profits might reasonably have been possible.

I also note that the accounts to which Mr S sent his payments bear no obvious relation to the exchanges he thought he was paying. I accept he may have gone ahead regardless because the person he'd met said that he should, and because he trusted that person. But I don't find it was reasonable for him to believe a payment he sent to an account in a wholly different company name was necessarily going where he thought it was.

All considered it seems to me that while the scammer had built trust with Mr S, he was placing a great deal of reliance on someone whom he'd never met in person, and about whom there was little in the way of outside validation or verification. He apparently knew very little about the investment or where his money was being sent. I find on balance, that he made the payments he did without having held a reasonable basis for the beliefs he held at the relevant time.

In short therefore I don't find it unfair for Santander to rely on the relevant exception to reimbursement under the CRM Code here. Under the terms of the CRM Code, that means Santander need not reimburse Mr S (in full or in part) unless the bank did not meet all of the requirements of the CRM Code in relation to each payment.

Based on what Santander could reasonably have known at the time, I agree with the Investigator that the first five payments weren't ones which would have particularly stood out as being at risk of being connected to a fraud or scam. These weren't for remarkable sums, and on the face of things wouldn't have appeared linked to a scam involving cryptocurrency trading.

With this in mind I don't think Santander needed to give an 'Effective Warning' under the terms of the CRM Code in relation to these payments, so I cannot find it at fault if it did not do so. And for similar reasons I don't think Santander needed to take specific steps at the time, such as intervening directly before it would release Mr S's payments.

However, at the point of payment six, Mr S was making a second payment of over £1,000 to the same payee on the same date. This payment took him into his overdraft, and the payee

was still one relatively new for Mr S's account. All considered, while I accept this still wouldn't obviously have been a scam-related payment, I think the payment and context meant there was sufficient reason for the bank to have at least identified a possible APP Scam risk. That means the bank should have provided Mr S with an Effective Warning during the course of the relevant payment journey.

Santander accepts it did not do so. The CRM Code says in such circumstances the liability for the resultant losses should be shared equally between the customer and the bank. Santander has now agreed to refund Mr S half of payments six and seven.

I do not find I can fairly require Santander to reimburse Mr S by more than this sum. I am satisfied that it has already offered to reimburse Mr S in line with the requirements of the CRM Code.

I've thought about whether Santander should pay Mr S more than it has done, for any other reasons. But I don't find this applies. And when Santander was made aware of what had happened, it acted appropriately and promptly tried to recover the funds - although by that point the funds had been removed and none remained. I do not find the bank to have been at fault here.

I know this will be extremely disappointing for Mr S, but I don't find Santander needs to pay him more than the sum it has now offered him. All considered, I think it is fair for the loss to be shared equally between Santander and Mr S for payments six and seven, and I don't find the bank needs to reimburse him for payments one to five. That means I won't be asking the bank to increase the offer it has agreed to make. In short, it is my finding that Santander's current offer represents a fair settlement in all of the circumstances.

Putting things right

Santander says it agrees to reimburse Mr S half of payment six and payment seven together with the associated overdraft costs. So if Mr S accepts my decision, Santander should settle this complaint as follows:

- Pay Mr S the sum of £805 (being half the value of payments six and seven) less any amounts already returned to Mr S; and,
- Refund any overdraft costs incurred by Mr S which directly resulted from being deprived of that sum, from the date Santander initially declined to reimburse Mr S's claim under the CRM Code until the date of settlement.

Santander should settle the complaint on the above basis within 28 days of receiving confirmation that Mr S accepts this decision.

My final decision

For the reasons given above I uphold Mr S's complaint about Santander UK Plc in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 November 2023.

Stephen Dickie
Ombudsman