

## **The complaint**

Mr and Mrs M complain about Santander UK Plc.

They say that Santander didn't do enough to protect Mr M from becoming a victim of a scam and would like Santander to pay back the money that has been lost.

## **What happened**

In September 2020, Mr M fell victim to a scam involving cryptocurrency. He was persuaded to part with £23,250.

Mr M reported the loss of funds to Santander as a disputed transaction. However, he quickly withdrew the claim as the scammer persuaded him that he would be receiving a refund.

Later, in February 2021, the scammer persuaded him to part with more money in order to access his supposed profits. These payments were stopped by Santander.

Mr M then reported the scam again and made a complaint. Santander didn't uphold his complaint.

Mr and Mrs M then brought their complaint to this Service – but our Investigator didn't think that it should be upheld. I've previously issued a provisional decision on this complaint where I explained that I thought this complaint should be upheld in part.

Mr and Mrs M accepted this, but Santander did not.

As the complaint was not settled, I will now issue my final decision.

## **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 to partially uphold Mr and Mrs M's complaint. I'll explain why.

I should say before I do, that I consider Mr M to be a vulnerable individual – Santander is aware of this but says that it did not know until after the scam had already occurred, in March 2021.

However, I do know that it spoke with Mr M in November 2020. And having listened to several calls it had with Mr M, I think that *any* telephone conversation with him would've highlighted to Santander that Mr M had a disability and was likely vulnerable. So, I think it should have known this from an earlier date than it says it became aware.

### ***Was Mr M the victim of a scam?***

It isn't in doubt here that Mr M fell victim to a scam. He was persuaded to part with money

and was unable to withdraw his supposed 'profits'. He was also persuaded to part with more money (although this wasn't processed) in order to access the supposed 'profits'. I know that Mr M told Santander that he had made money on the investment – but I think he means the money the investment apparently made – as I haven't seen any evidence of any payments being made back to him.

Mr M made the following payments as part of the scam.

Date	Payee	Payment type	Amount
29 September 2020	Y	Debit card	£250
5 October 2020	Y	Debit card	£3,000
10 November 2020	Y	Debit card	£10,000
10 November 2020	Y	Debit card	£10,000

#### *Did Mr M authorise the payments?*

In line with the Payment Services Regulations 2017 (PSRs), Mr M isn't liable for payments he didn't authorise, unless he failed with gross negligence or intent to comply with the terms of the account or keep his personalised security details safe.

I don't think it's in dispute that Mr M authorised the payments in question here - he provided the one-time passcode to authorise them and they were made using his own debit card. He also spoke with Santander about the payments.

I understand Mr M had been tricked into instructing Santander to make the payments – but while Mr M never intended the payments to go to the scammers, this doesn't change the fact he authorised them and is therefore presumed liable for the loss in the first instance.

#### *Recovery of Mr M's payments*

After Mr M made the payments, I wouldn't expect Santander to do anything further until it was notified of the scam.

The only recourse for potential recovery of the funds for the payments made by debit card would be via the chargeback scheme. Chargeback is a process by which disputes are resolved between card issuers (here, Santander) and the merchant (here, Y).

However, a chargeback in these circumstances would unlikely have been successful. This is because Y is a legitimate crypto exchange and provided the services that Mr M had requested of it – the purchase of crypto and subsequently moving that crypto onto a wallet of Mr M's choosing. What happened after that crypto was successfully moved is therefore a separate matter – and so a successful chargeback would likely never have been possible – and so I don't think that these payments were recoverable once they had been made.

#### *Should Santander have reasonably prevented the payments in the first place?*

I can only uphold this complaint if I think that Santander reasonably ought to have prevented some or all of the payments Mr M made in the first place – therefore preventing the loss before it happened.

Mr M authorised the scam payments in question here – so as I've explained above, he is presumed liable for the loss in the first instance.

That said, as a matter of good industry practice, Santander should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Santander should fairly and reasonably:

- Been monitoring accounts – including payments made and 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 its customers were at risk of fraud (amongst 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; and
- 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 leads me to consider the payments that Mr M made – and if Santander should have intervened.

### *The first two payments*

Having considered the first two payments Mr M made, I'm not persuaded that Santander should have become involved at this point. I say this because as I've explained above, there is a balance to be struck. I've reviewed Mr and Mrs M's account transactions and activity and I don't think that they are sufficiently unusual or uncharacteristic to have triggered Santander into taking extra steps before processing Mr M's payment instructions.

### *Payment three*

Payment three was for £10,000 – a large amount of money. While Mr and Mrs M had made another transaction in October 2020 for a similar amount, this payment was now going to a seller of crypto – and was still unusual for the account.

This payment should've stuck out to Santander being uncommon considering the way in which Mr and Mrs M generally used their account, especially given that by January 2019, Santander should already have had a good understanding about how scams like the one Mr M fell victim to work.

With this in mind, Santander should reasonably have contacted Mr M to establish whether the transaction posed any possibility of placing him in financial harm before processing it. I would've expected it to have questioned Mr M about the payment – including what he was making the payment for and surrounding context and to proceed accordingly. The intention being to disrupt or uncover a potential fraud or scam. I also think that it should have taken

extra care with Mr M, given his vulnerability.

Santander has pointed out in its response to my provisional decision that it did speak with Mr M on the 2 and 4 November, but the amounts did not debit the account for a few days, as I had commented that it was not clear what the calls were in relation to. However, even if these calls were in relation to the payments that eventually left the account on the 10 November, there are no copies of the calls to see what was said, and there are no notes about what was said either. So, I'm not able to say that Santander did give a meaningful warning to Mr M at this time and must conclude it missed an opportunity to prevent the loss from this point. I know that Santander says that as it did give Mr M a meaningful warning when he tried to make further payments that it would also have done this on 2 and 4 November. But there's no evidence to show that it did.

I should also point out that later when Santander spoke with Mr M about the scam, it said he told it that it was Mrs M who made the payments. It says that if it was Mrs M who made the payments why it should Mr M's disability and vulnerability apply. But it also says that it spoke with Mr M about the payments at the time (although as I've said above, so call recording is available) – and I've listened to a 'security' call back it had with him about the payments (when no scam warning was given). The payments were made with Mr M's debit card, and he provided a one-time password to approve the payments. So, I don't think that it actually was Mrs M who made the payments.

#### *Mr M's later actions*

Mr M reported that he had been scammed to Santander – but quickly withdrew his complaint. This is because he was persuaded by the scammer that he would be getting a refund of the money he had already paid.

This should have been a further red flag to Santander – it should have asked him more about this at the time, and potentially asked Mr M to visit a branch in light of his vulnerability. It is a common tactic of scammers to make this kind of promise in order to attempt to get further funds from an individual who has already been shown to be susceptible to this kind of scam.

Santander also says that as Mr M went on to try and make transactions in February 2021, after he was given a later scam warning by Santander, that this shows he would have continued to try and make payments no matter what it told him – so it doesn't think that it could have prevented the two payments of £10,000.

While I would sometimes agree with this logic, I do think that in Mr M's case, there is reason to doubt this. As I've said above, Mr M had a disability, and I consider that he was a vulnerable person. Having listened to the calls Mr M had with Santander, I think it is clear that Mr M may have had some difficulties in understanding what was being said to him, and some of the answers he gave didn't stack up.

I do recognise that Santander didn't process the later payments, but had it taken into account Mr M's individual circumstances, and asked him to visit the branch for a face to face meeting when he cancelled his earlier complaint, it could have broken the spell that Mr M had been put under by the scammers. And he may have realised earlier that the promise of getting his money back was untrue and so wouldn't have attempted to make further payments.

#### *Should Mr M bear some responsibility for the loss?*

While I do consider that Santander should have prevented the payments from payment

three, I do need to consider if Mr M should bear some responsibility for what happened here by way of contributory negligence.

Mr M is already bearing some responsibility here, as I will not be asking Santander to refund the first two payments that Mr M made. But I don't think that Mr M should bear responsibility for the loss of the last two payments. Mr M was not a sophisticated investor – and he didn't have knowledge of the Financial Conduct Authority (FCA) prior to making his complaint – so I don't think he would have checked the FCA website to see a warning that was placed on the scammer in August 2020.

I understand that Mr M told Santander that he had good insight in crypto. But I have reason to doubt that he did – and I think that Santander should also have done the same. As I've explained above, some of the answers Mr M gave Santander when it spoke with him didn't stack up. Again, I will highlight that Mr M was vulnerable – and Santander were the experts here with more knowledge on the intricacies of these types of scams.

It follows that I am satisfied no deduction for contributory negligence should be made in respect of the last two payments.

### **Putting things right**

Santander should pay Mr and Mrs M the total of the last two payments made.

I calculate this to be £20,000.

On top of this Santander should also pay Mr and Mrs M 8% simple interest on this amount, from the date of the payments to the date payment it made to Mr and Mrs M (less any lawfully deductible tax).

### **My final decision**

I uphold this complaint in part. Santander UK Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 11 July 2023.

Claire Pugh  
**Ombudsman**