

The complaint

Mr O held a current account with Santander UK Plc. Between July and September 2022, he invested a large amount of money in a cryptocurrency. He lost his investment, and he believes he was scammed into making it by a fraudster.

Mr O used his Santander account to transfer money to the fraudster. He did so through a cryptocurrency exchange service which he used as an intermediary. He thinks that Santander should have stopped him making the payments to the exchange service. It didn't, so he wants it to refund him all the money he lost.

What happened

During our investigation into this complaint, we have heard some slightly different accounts of how and why Mr O decided to make his investment. However, when he first brought the complaint to us, he included a detailed description of what he remembered happening. I am satisfied that these memories are reliable, and based on what he told us, I accept that he was the victim of a fraud and that events unfolded as follows.

The fraudster first contacted Mr O by a text message. Mr O didn't recognise the fraudster who subsequently claimed that he had sent the message to him by mistake. It had been intended for someone else with a similar phone number. But the fraudster kept in contact with Mr O.

The fraudster built up a relationship with Mr O, messaged him frequently, gained his trust, and told him he could help him invest in cryptocurrency and make a large profit. Mr O believed the fraudster and under his (dishonest) guidance he made 14 different investments into the cryptocurrency.

Mr O made each investment in two steps. Firstly, he transferred money from his Santander account to an account he had held with the exchange service for around three years. He then used the exchange service to buy the cryptocurrency and the fraudster stole his money after that.

Brief details of the payments Mr O made from his Santander account are as follows:

| Transfer number | Date | Amount |
|-----------------|-------------------|---------|
| 1 | 14 July 2022 | £5,000 |
| 2 | 19 July 2022 | £1,000 |
| 3 | 19 July 2022 | £5,000 |
| 4 | 19 July 2022 | £9,000 |
| 5 | 29 July 2022 | £5,000 |
| 6 | 30 July 2022 | £5,000 |
| 7 | 13 August 2022 | £5,000 |
| 8 | 13 August 2022 | £5,000 |
| 9 | 13 August 2022 | £1,000 |
| 10 | 15 August 2022 | £5,000 |
| 11 | 22 August 2022 | £5,000 |
| 12 | 7 September 2022 | £18,000 |
| 13 | 20 September 2022 | £5,000 |
| 14 | 21 September 2022 | £5,000 |

One of our investigators has already looked into Mr O's complaint and didn't recommend that Santander should give him any money back. Mr O didn't agree with the investigator's findings and asked for his complaint to be re-assessed. So, it has come to me as an ombudsman to make a 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.

Firstly, I would like to say that I was really sorry to hear about what happened to Mr O. As well as causing financial loss, frauds can be deeply distressing, and Mr O has my sincere sympathy for what the fraudster did to him.

Before considering the details of Mr O's case, I would like to point out that in this decision I am only considering the actions which Santander took or didn't take. While I understand that the exchange service was operating legally, I am not looking into the way it worked. And whilst I do not have definite information on exactly how the fraudster stole Mr O's money once he had sent it to the exchange service, this is not particularly relevant to this complaint about Santander.

There is no doubt that Mr O followed Santander's normal process when he made the transfers. By doing so, he instructed Santander to move the money. I fully accept that he only did this because of the dishonesty of the fraudster, but he effectively authorised Santander to send the money. Frauds of this type are often called *Authorised Push Payment* (APP) frauds.

While banks are normally expected to act on their customers' instructions, APP frauds are a significant concern in the banking industry and at the time of Mr O's investments, I would have expected Santander to look out for anything noticeably unusual. And if it saw anything worrying about Mr O's transfers, I would have expected it to check if he wanted to proceed. The decision to go ahead or not would then lie with Mr O.

Both parties agree that Santander called Mr O before processing transfer 12, which it seems to have considered unusual due to its large size. Santander seems to have asked Mr O reasonably probing questions and to have given appropriate warnings about the risks he may have been taking. However, some of the answers Mr O gave seem to contradict the description of events he sent us. For example, he said nothing about the initial message from the fraudster and told Santander he had heard about the investment opportunity "*from friends*". Similarly, Santander asked Mr O if anyone had told him to lie or mislead it and he said "*no*", although he has also told us that the fraudster "*coached*" him what to say if Santander challenged him.

I certainly accept that the fraudster would have coached Mr O in what to say if Santander challenged him about the payments, but I cannot hold Santander responsible for this. It seems to me that the intervention it made for transfer 12 was fair and reasonable, as was its decision to then follow Mr O's instruction and process the payment. However, payment 12 was only one out of 14 and Santander didn't intervene for the other 13. So, I have considered whether Santander should have intervened for some of the other transfers.

I'm aware that Mr O had sent money from Santander to his account with the exchange service previously for legitimate payments, so it wasn't a new payee. And some of the transfers in this fraud were for relatively small amounts and didn't stand out as unusual. So, I don't think it would have been reasonable for Santander to have intervened for each transfer. However, Mr O has specifically highlighted transfers 2, 3 and 4, which were all made on the same day and had a total value of £15,000, as occasions when Santander should have called him.

I agree with Mr O that Santander should probably have called him before processing payment 4. However, had it done so, I see no reason why he would have responded differently to the way he did over its intervention for payment 12. I think it's highly likely he would have told Santander to proceed. Similarly, I think it's also highly likely he would have told Santander to proceed if it had intervened for other transfers.

Mr O has told us that he became aware of the fraud when he tried to withdraw some of his investment and the fraudster stopped him doing so. This seems to have been after transfer 14. Later, although I don't know exactly when, he reported the fraud to Santander.

Once a customer reports fraud to a bank, I normally expect it to try to reclaim the money the customer has lost from the recipient's account. Recovering money from fraudsters like this can be extremely difficult, as they usually move it away from the receiving bank very quickly. So, time is of the essence.

In Mr O's case, once his money had left the exchange service, it was effectively beyond Santander's reasonable reach. I don't know how quickly Santander reacted to Mr O reporting the fraud. But I'm satisfied that by the time of the report, it was too late for Santander to have had a realistic chance of recovering his money for him.

To sum up, I think the intervention Santander made for payment 12 was reasonable and proportionate in the circumstances. And while I think it should have intervened earlier, had it done so, I think that Mr O would probably have told it to proceed. And I also think that by the time Mr O told Santander about the fraud, it was already too late for it to get his money back. So, while Mr O has my sincere sympathy, I don't think Santander was responsible for his loss.

My final decision

For the reasons I have set out above, I am not upholding Mr O's complaint about Santander UK Plc. I am not going to tell it to give him any money back.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 26 October 2023.

Steve Townsley

Ombudsman