

The complaint

Mr and Mrs T complain about Santander UK Plc.

They say that Santander didn't do enough to protect them when they became the victims of a scam and would like Santander to refund them the money they have lost.

What happened

The details of what happened are well known to both parties – so I won't repeat them in detail here.

In summary, Mr and Mrs T saw an advert of Facebook for investing in cryptocurrency. They read the reviews which were good, and the advert promised high returns of 100-150%. Unfortunately, this was a scam.

Contact was made, and Mr and Mrs T decided to invest. They were advised to download AnyDesk, and open accounts with several Electronic Money Institutions (EMI's) and an account with Binance – a crypto exchange, which they say the scammers helped open.

The money was moved to the EMI's before moving to Binance. Mr and Mrs T used money from an ISA to fund the investment, and also took out a loan – which they told Santander was for home improvements.

The following payments were made as part of the scam.

Date	Payment	Payment type	Amount
11 January 2023	Transfer to Mr T	Faster payment	£1,000
13 January 2023	Transfer to Mr T	Faster payment	£9,000
13 January 2023	Transfer to Mr T	Faster payment	£1,000
14 January 2023	Transfer to Mr T	Faster payment	£3,800
14 January 2023	Transfer to Mr T	Faster payment	£1,300
23 January 2023	Transfer to Mr T	Faster payment	£9,000
24 January 2023	Transfer to Mr T	Faster payment	£6,000
24 January 2023	Transfer to Mr T	Faster payment	£3,000
25 January 2023	Transfer to Mr T	Faster payment	£3,300
30 March 2023	Transfer to Mr T	Faster payment	£1,700
		Total	£39,100

When they realised they had been scammed, they complained to Santander, but it didn't uphold their complaint.

Unhappy, they came to this Service. Our investigator looked into things but didn't think that the complaint should be upheld.

Mr and Mrs T asked for a final decision, so the complaint has been passed to me.

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 not to uphold Mr and Mrs T's complaint for broadly the same reasons as our Investigator. I know this will be disappointing them, so I'll explain why.

It isn't in dispute here that Mr and Mrs T have fallen victim to a scam and have lost money as a result. However, even when it is clear that a scam has taken place, and individuals have been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

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 having been good industry practice at the time.

In broad terms, the starting position at law is that banks, electronic money institutions (EMI's) and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

I understand that Mr and Mrs T say that they didn't authorise the payments – but as Mr T spoke with Santander while making one of the transactions, I think that they were more than likely authorised, even if Mr T was being instructed to make the payments by the scammer.

So, as I think Mr T authorised the payments in question here – even though he was tricked into doing so and didn't intend for the money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Santander should also 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 above, 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.

In this case, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr and Mrs T when they payments were authorised payments from their account, or whether it could or should have done more before processing the payments.

Looking at the payments in question here, I don't think that Santander needed to get involved when Mr and Mrs T made the first payment to the scam – I don't think that the payment was particularly suspicious or unusual – and was going to an account in Mr T's own name. However, when the second payment was made, for £9,000, I think that Santander should have got in touch to check that all was well and try to protect Mr and Mrs T from financial harm. But even though I think that Santander should have intervened at this point, for me to uphold this complaint, I would have to also find that this would have made a difference to what happened – and I'm afraid that I don't think that it would.

I say this because Santander has provided a copy of a call that took place with Mr T when he made the payment for £3,000 on 24 January 2023. During this call, Santander questioned Mr T about what he was doing and why – it explained to him that he needed to be honest about the payment, that scammers tell customers to lie to their bank about the true nature of payments, and that if he had been told to do this, it was important he divulged this.

But Mr T wasn't honest about what he was doing – he told Santander that he was moving the money to his account of his own accord for savings, and that there was no third party involved in what was happening – but this wasn't true. Mr T had been told to conceal what he was doing, and there was a third party telling him what to say and do. So, I don't think Santander could have prevented what happened.

I know that Mr and Mrs T's representatives have said that an earlier intervention would have broken the spell, and that if Santander had contacted Mr and Mrs T when the payment for £9,000 was made, the scam could have been stopped. The representative says that it is speculation to say that Mr T would have said the same thing to Santander as he did with the later payment, and that Santander should also have continued to intervene with the later payments.

But I am not persuaded that it would have made a difference. Mr T also obtained a loan from Santander for a significant amount of money (£20,000) on 23 January 2023 – and he said on his application that the loan was for home improvements. So, I think it is clear that Mr and Mrs T were so taken in by the scammer that they were prepared not only to conceal the purpose of the payments, but also use false information to obtain funds with which to do so. And I am also not persuaded that even if Santander had contacted Mr and Mrs T again that they would have divulged what was really going on.

I am very sorry for the situation Mr and Mrs T now find themselves in – I know that they have lost a lot of money and taken on debt to fund the scam. But this is the fault of the scammers 'themselves – not Santander, and I can't ask Santander to refund them when I don't think it could have prevented the loss.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 14 June 2024.

Claire Pugh
Ombudsman