

The complaint

Mr M complains that Santander UK Plc (“Santander”) won’t refund the money he lost as part of a scam.

What happened

The background to this complaint is well known to both parties, so I’ll only refer to some key events here.

In April 2022, Mr M clicked on an advert for investing on a well-known social media platform. He says that he was contacted by someone purporting to be from a crypto trading firm. Mr M was persuaded to make the following payments to two crypto exchanges. My understanding is that the funds were then transferred on to the scammer, that I will call B.

Transaction Number	Date	Amount	Type of Payment	Beneficiary
1	05 May 2022	£2,000	Debit Card	Bitpanda
2	09 May 2022	£1,000	Credit Card	Coindeck
3	10 May 2022	£2,141.32	Debit Card	Bitpanda
4	11 May 2022	£2,000	Credit Card	Bitpanda
5	12 May 2022	£2,143	Credit Card	Bitpanda
6	13 May 2022	£1,000	Credit Card	Bitpanda
7	16 May 2022	£515.65 Credit	Transfer into Current Account	Mr M
8	24 June 2022	£2,680	Faster Payment	Bitpanda
9	24 June 2022	£1,950	Faster Payment	Bitpanda
10	24 June 2022	£5,000	Faster Payment	Bitpanda
11	07 July 2022	£2,680 Credit	Transfer into Current Account	Mr M

On 16 May 2022 Mr M contacted Santander as he was worried that he might be being scammed. During this call Santander said that they provided Mr M with a scam warning.

Mr M was persuaded to make further payments to B as it claimed it would allow him to get his money back. When he was not able to recover his funds, he realised that he had been scammed by B.

I issue a provisional decision on 4 January 2024 in which I said the following

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

At the time Mr M made his payments, Santander was expected to process payments a customer authorised it to make; but as a matter of good industry practice, it 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.

There is a balance to be struck: Santander had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests. But they can't be involved in every transaction.

All of the payments in dispute were Faster Payments sent to a well-known crypto exchange. So, it's reasonable for me to conclude that Santander ought to have known that Mr M was likely purchasing crypto at the time he sent these payments. I've also thought about whether there was anything else about the payments which ought to have concerned Santander. In this instance, I don't think that the payments made before the call on 16 May 2022 were sufficiently out of character to have prompted an intervention from Santander. I note that there was contact between Santander and Mr M during these payments but this seemed to have been limited to making sure that Mr M had authorised the payments. I do not think, given the size of the payments, that Santander needed to do more.

That said though, I think that after the call with Mr M on 16 May 2022, Santander should really have intervened the next time that Mr M made a payment to a crypto exchange. So I think that Santander should have intervened on 24 June 2022. Santander are aware of recovery scams and that someone making a further payment to a crypto exchange after they were scammed is a sign that someone is likely being scammed.

I then need to consider what would likely have happened had such an intervention occurred. It could be argued that Mr M would have continued regardless of such a warning, as he did so after the 16 May 2022 call. But I don't think that this would have been the case. I say this because, if an intervention had happened at this point, Santander would have likely discovered that Mr M was intending to send further funds to B in order to be able to make a withdrawal. Had Santander then provided a specific warning explaining that sending further funds to get previously 'invested' money back is part of the scam and that sending further money would not help him to recover money already sent to a scammer, I don't think that Mr M would have proceeded with the final three transactions.

In this instance, I also think that Mr M should take some responsibility for his loss. Mr M did send further payments to B despite being concerned that he was being scammed. So overall I feel it is appropriate to reduce the amount of redress I am proposing Santander to pay by 50%.

I've considered whether Santander could have recovered any of Mr M's payments. But given that the payments were sent to a crypto exchange and were then forwarded on to B, I don't think that any recovery could have been made or that the Contingent Reimbursement Model applies in this instance.

Putting things right

- *Refund 50% of payments 8,9 and 10, minus the refund received on transaction 11;*
- *Pay 8% simple interest, per year, on this amount from the date of each payment to date of settlement (less any tax lawfully deductible)."*

Mr M responded to the provisional decision and did not disagree with what I proposed. Santander did not agree with my decision and they raised a number of points including:

- That there is a need to strike a balance between taking measures to detect fraud and Santander's legal obligation to process payments
- There is no obligation for Santander to detect and prevent every fraudulent transaction
- There is no legal right of reimbursement for authorised payments outside of the CRM
- The interest award does not reflect interest rates available at the time of the scam or the position taken by courts in relation to interest and therefore the interest award represents a windfall

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 should highlight that we have recently set out our position in a number of decisions with Santander in relation to our approach on cases like this one. So I am not going to go into a great deal of depth in relation to all the points raised.

I should explain though, that Santander is correct, in that there is no obligation for it to detect and prevent every fraudulent transaction – although that would be ideal, I also recognise that would be unrealistic. But that said, the terms and conditions in place at the time did give it the right (but not obligation) to refuse a payment if it reasonably suspected it related to fraud or any other criminal act. I accept that there is a balance to be had here between identifying suspicious transactions and preventing fraud and ensuring consumer's banking instructions are acted upon quickly and accurately. But in this instance I don't think Santander got the balance correct.

I say this because Santander was *aware* that Mr M had likely been targeted in a scam from around 16 May 22. So I think it's reasonable in this instance for Santander to have exercised its right to prevent a payment, given that scams to recover money lost to a scam are unfortunately fairly common and something Santander should have been aware of. So when it saw a further payment to the same crypto exchange that Mr M had used to forward funds on to the scammer, I think it would have been reasonable for it to have intervened and contacted Mr M about the payment.

I have also taken into account that Mr M transferred money to an account in his own name, rather than directly to the scammer. But for the reasons I set out above, I think it's still reasonable to hold Santander responsible. By the time of this scam, Santander should really have been aware of multi-stage scams, especially as in this instance, when it was on notice that Mr M was likely being scammed.

I acknowledge Santander's point that there is no legal right of reimbursement for authorised payments. But I'm required to decide what I think was fair and reasonable in the circumstances. And overall, I think that it's reasonable that Santander should've done more to protect Mr M, when it identified that Mr M was likely being scammed, rather than just allow Mr M to continue to make similar transactions to crypto exchanges from his account, without any further intervention.

Had such an intervention occurred I am satisfied that Mr M would have explained what he was doing and why and a warning from Santander at this point would have stopped further transactions being made. So I think that Santander could have stopped Mr M's loss from 16 May 2022.

In relation to the interest rate that I have used, while Mr M may have not been able to find a savings account with a similar rate of interest, the interest award takes into account the overall impact of being deprived of those funds. It takes into consideration that Mr M may not have chosen to save the funds in question and may have used it in other ways.

Putting things right

So I think that Santander should

- Refund 50% of payments 8,9 and 10, minus the refund received on transaction 11. To clarify this should be worked out as the sum of these three payments minus the refund received then 50% of the resultant figure.
- Pay 8% simple interest, per year, on those amounts, calculated from the date of each payment to the date of settlement (less any tax lawfully deductible).

My final decision

Because of the reasons above, I uphold this complaint in part and require Santander UK Plc to pay the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 February 2024.

Charlie Newton
Ombudsman