

## The complaint

Mr H complains that Santander UK Plc didn't do enough to protect him from an investment scam and that it hasn't refunded him after he reported the scam.

## What happened

The circumstances of this complaint are well-known to both parties and so I'll only set out a brief background.

Mr H saw an advert online promoting cryptocurrency investment. He looked into it and was impressed with what he saw. But everything Mr H was seeing had been set up by a scammer. Not knowing that at the time, Mr H was drawn in, with the scammer promising he could double his money.

Mr H sent £500 to the scammer on 27 March 2023 by first transferring the funds to a cryptocurrency platform and on from there. Mr H then received a credit from the scammer, apparently as a device to convince Mr H all was genuine and that he was making the promised returns. This led Mr H to invest further. The below table represents all payments made toward the scam from Mr H's Santander account:

Payment number	Date	Amount
1	27 March 2023	£500
2	29 March 2023	£500
3	7 April 2023	£500
4	11 April 2023	£500
5	17 April 2023	£500
6	17 April 2023	£499
7	17 April 2023	£1,000
8	17 April 2023	£2,500

Mr H also made several payments – totalling around £30,000 – from another account of his, held with a different bank.

Mr H realised he'd been scammed when he was told there were fees to be paid if he wanted to withdraw his investment. He reported what had happened to Santander and asked it to reimburse his loss.

Santander considered what had happened and told Mr H it wouldn't reimburse him. It said the payments had all been properly authorised and it had no reason not to follow Mr H's instructions. It also said Mr H's loss hadn't occurred from his Santander account, but from the cryptocurrency platform when he sent the funds on to the scammer. So it didn't believe it should be responsible for his losses.

Mr H was unhappy with Santander's response and so brought his complaint to our service. One of our investigators considered the complaint and recommended it be upheld. She acknowledged Mr H had made the payments to an account he was in control of but felt there were signs Mr H was at risk of financial harm through fraud and that Santander ought to have picked up on those. She said it ought to have stepped in to question the final payment and that, if it had, the scam would more likely than not have been revealed. On that basis she said Santander ought to reimburse that final payment.

Our investigator also took account of Mr H's own actions and didn't consider them to have been reasonable. She noted the investment sounded too good to be true, given Mr H was told he could double his money in a very short window. And she also noted he'd not carried out any independent research into the persons behind the supposed investment. She then found that Mr H ought to bear responsibility for 50% of the final payment.

Mr H accepted but Santander didn't. Broadly speaking, its position remained unchanged from what it had said previously.

The complaint has now been passed to me to decide.

### **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'm reaching the same outcome as our investigator and for broadly the same reasons.

The starting position at law, broadly speaking, is that Santander is expected to process payments authorised by Mr H quickly. And once those payments have been authorised, Mr H is generally deemed responsible for them. This is set out in the Payment Service Regulations (2017) and Mr H's account terms and conditions.

However, taking into account the relevant law, regulations, industry guidance, and best practice, firms like Santander ought fairly and reasonably to have systems in place to monitor transactions and accounts for signs that its customer might be at risk of financial harm through fraud. Where such risks are detected, there ought to be action from the bank to intervene through the giving of warnings and scam education. Sometimes, that will mean stopping a payment so that the customer can be questioned directly about it.

Where there is a failure by a firm to properly intervene and protect a customer, it might then be fair and reasonable to say that firm becomes responsible for the customer's loss. And so, in Mr H's case, it's for me to determine if Santander made an error or errors over the course of the scam and, if so, whether it's fair and reasonable for it to be held responsible for Mr H's losses as a result.

Santander ought fairly and reasonably to have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency, when considering the scams that its customers might fall victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name.

And the FCA has communicated with the industry on this specific subject numerous times in recent years, warning of the rising prevalence and risk of such scams.

The fact that the money used to fund the scam wasn't lost at the point it was transferred to Mr H's own account does not alter that fact and I think Santander can fairly be held responsible for Mr H's loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against either the firm that is the origin of the funds or the point of loss.

And I issue these findings whilst taking account of the Supreme Court's judgement in *Philipp v Barclays Bank UK PLC*, which Santander has referenced, and in the knowledge that Santander can and in fact does stop unusual payments – including those made to accounts in a customer's own name – for questioning and, in some cases, will refuse to execute such instructions due to perceived scam risk.

I've then gone on to consider whether the payments being made by Mr H presented a scam risk to Santander which it ought to have responded to. And, like our investigator, I find that Santander ought to have stepped in to question payment eight.

The payments that came before were of individually low value and were spread out over a number of days. And so the identifiable risk was fairly and reasonably perceived as being lower. But the assessment of risk is an ongoing exercise. And so whilst the same payee was being used, the other characteristics surrounding the payments had become unusual, suspicious, and typical of cryptocurrency investment scams by payment eight.

The combined value of the transactions by that point had reached £5,500 in ten days by the time payment eight was being authorised. That meant significantly higher than usual outgoings for the account, which doesn't appear to have otherwise been used a great deal from one month to the next. I also note the payments quickly escalated in value towards payment eight. And the fact there were four payments not just in one day but within just over thirty minutes was also an indicator of a scam risk. It's with all these factors in mind, and considering the payments were being made to a cryptocurrency platform and Mr H had told Santander payments were being made toward an investment, that lead me to conclude Santander ought to have intervened and warned Mr H about cryptocurrency investment scams.

The question from here then is whether appropriate intervention from Santander would have made a difference and seen further losses avoided. I'm conscious here that Mr H doesn't appear to have been instructed to lie to Santander or to hide the truth about what he was doing. Indeed, when asked for a payment purpose he told the bank he was investing. And so the evidence suggests he would have been honest. That might be something of an assumption. But, where it's not possible to say for certain what would have happened, it is fair and reasonable for this service to take the available evidence and make an on balance finding. That is to say a finding on what we think would more likely than not have happened. Santander expressed some objection to this in its response to our investigator's findings, but it ought to be very much aware of how this service operates in this regard.

Given that Mr H would more likely than not have been honest with Santander about what he was doing it follows that the scam could and should have been uncovered. Mr H would have been revealing that he found the cryptocurrency investment online, that he had little information on the people behind it, and that he was told he'd double his money. Such information would have quickly come to the fore, had Santander asked the appropriate, fair and reasonable questions. The answers would all have been indicative of Mr H falling victim to a cryptocurrency investment scam. Significant and strong warnings against proceeding ought then to have been given by Santander, with a description of the common features of these scams being explained to Mr H and linked to his circumstances.

Mr H ultimately discovered he'd been scammed himself, when asked to pay fees to release his money. And so, whilst he was clearly taken in by the scammers, he was reactive to changes in circumstances and new information being presented to him. I'm then satisfied it's more likely than not Mr H would have heeded Santander's warnings and listened to what he was being told. The loss of payment eight could then have been prevented. Santander made an error that has led to the loss and so it's fair and reasonable it compensates Mr H for it.

Our investigator said Mr H should still bear responsibility for 50% of payment eight. Mr H accepted that, and Santander has always thought he should be fully responsible. That means there's really no further dispute over the point of Mr H bearing some responsibility and so my findings on the point will be limited. It's enough for me to say that, like our investigator, I believe Mr H ought to have viewed the supposed investment with a great deal of scepticism, given the improbable returns that were being proposed. And given there appears to have been little done to try and verify the parties involved, I can't say Mr H's actions were reasonable.

### **Putting things right**

On Mr H's acceptance Santander should:

- Refund 50% of payment eight; *and*
- Pay interest on that refund at 8% simple per year, calculated from the date of loss to the date of settlement.

### **My final decision**

I uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 December 2024.

Ben Murray  
**Ombudsman**