

## The complaint

Mr K complains that Santander UK Plc (Santander) won't refund money he lost in an investment scam.

## What happened

### *What Mr K says:*

Mr K was on social media and saw an advert apparently endorsed by a well-known media / finance TV personality. He thought the opportunity was a good one. The advert had a link to an investment firm (which I will call 'firm A') and it said an investment of USD250 would start an 'investment journey'. Mr K paid this on 25 April 2022.

He was then approached by a 'broker' who said he would help Mr K carry out trades. He said Mr K needed to open an account with firm A – which he did. The 'broker' advised Mr K to open an account in his name with a crypto exchange, which he did under his guidance. Mr K also downloaded screen sharing software – so he could be guided through making the investments and see the performance.

In a short period of time, Mr K could see his investment growing in value. He recalls that after one month, an investment of £1,000 had grown to USD28,000; and was encouraged by the broker to send more money to his crypto wallet. From there, it was sent to firm A. Mr K was mesmerized by the scammer's knowledge of complex investment topics.

The broker encouraged Mr K to borrow money to invest, and Mr K took out three loans totalling £30,000. **(continued)**

The payments and receipts were:

Date	Payment / money in	Amount	Balance
25 April 2022	Transfer in	(£200)	

25 April 2022	Faster payment to crypto exchange	£200	£11.95 credit
16 May 2022	Transfer in	(£200)	
16 May 2022	Transfer in	(£200)	
16 May 2022	Faster payment to crypto exchange	£400	£11.95 credit
30 May 2022	Loan funds in	(£10,000)	
30 May 2022	Transfer in	(£10,000)	
30 May 2022	Faster payment to crypto exchange	£20,000	£11.95 credit
7 June 2022	Transfer in	(£8,000)	
7 June 2022	Faster payment to crypto exchange	£8,000	£11.95 credit
<b>Total loss</b>			<b>£28,600</b>

The broker then said if Mr K didn't send any more money, his investment would disappear – and so he continued to send money, funded by the three loans. He then saw the value of the investment reduce to nothing and realised he had been scammed.

Mr K doesn't believe he will ever recover from the stress caused. He is now in financial difficulty and cannot trust anyone. He lives with the fear of being scammed again.

Mr K complained to Santander via a third-party firm of solicitors in October 2023.

Mr K says Santander should've done more to protect him. The payments were out of character and should've been questioned. He says Santander should refund the money, plus interest at 8% per annum and compensation of £250.

#### *What Santander said:*

Santander declined to refund any money. The bank said Mr K authorised the payments; and gave some 'post scam' education points to him.

#### *Our investigation so far:*

Mr K brought his complaint to us. Our investigator upheld it and said Santander should refund 50% of the final two payments. The bank intervened in the payment for £20,000 on 30 May 2022, but she felt the questioning should have gone further than it did and should've probed further.

And if so, the scam would've been uncovered and the final two payments stopped. She said Mr K should bear 50% of the losses as he didn't do any research into firm A; he had been approached via social media; he was a personal banker with Santander and so should've been aware of scams – more so than the average person; and because of that he should've been more diligent before sending funds; and there were negative reviews of firm A online.

Santander didn't agree and asked that an ombudsman look at the complaint. The bank felt the call was handled satisfactorily and they did all they could. They said they'd provided

sufficient warnings to Mr K about the risks of investing in crypto currencies; he said he had been investing for a few months; he said he was acting alone; and he had full access to his crypto wallet.

### **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.

I'm sorry to hear that Mr K has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr K didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, 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 make 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.

I need to decide whether Santander acted fairly and reasonably in its dealings with Mr K when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary– and in this case, the payments were made to Mr K's own account with firm A.  
**(continued)**

#### *First two payments – £200; £400:*

The first matter here is whether these were payments that Santander might reasonably have considered unusual, and therefore whether they should've held or stopped the payments and contacted Mr K about them.

I looked at Mr K's account history with Santander. And the account was only used for a small number of low value payments from time to time – it wasn't used for receipt of salary or day to day payments for example. There were some payments similar in value to the first two scam payments, for example:

April 2022: £200; £3,000.

September 2021: £200; £200.

August 2022: £200.

Taking this into account, the first two payments weren't unusual or of a sufficiently high value to expect Santander to intervene.

And - there's a balance to be made: Santander has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think Santander acted reasonably in processing the first two payments.

#### *Third and Fourth Payments - £20,000 and £8,000:*

But looking at the next payment for £20,000 – this was out of character compared to Mr K's normal use of the account. And for the months of April 2022 and May 2022, the only activity on the account were the payments to Mr K's crypto wallet, and the receipt of funds inwards to cover the payments. And – each time, there was only a small credit balance left. This is characteristic of a scam, and we would expect Santander to have intervened – which the bank did.

Santander blocked Mr K's account and stopped that payment, and Mr K called the bank. I listened to the call – which is important in the context of this complaint. I set out some key points from the call:

*Santander:* Why are you making the payment? Mr K: to my account at (crypto wallet).

*Santander:* Reasons for the payment? Mr K: investment into crypto and other commodities as well. I've been doing it for a couple of months now.

*Santander:* Can you access your account details? Mr K: yes.

*Santander:* No one else has access? Mr K: no.

*Santander:* Any peer pressure or anyone forced you to make the payment? Mr K: no not at all.

*Santander:* Has anyone called you and said to move money? Mr K: no.

*Santander:* Crypto investments are not regulated.

*Santander:* Have you been contacted by a financial advisor, broker, or crypto 'SME'? Mr K: not at all.

*Santander:* (Twice) Be wary (of crypto investments). They will try to be helpful and help you set up a crypto account, tell you how to access the platform etc.

*Santander:* Do you have access to the crypto platform? Mr K: yes

*Santander:* Be wary of third parties (having access) but as you have full control, there's nothing to worry about there.

*Santander:* If it is a limited company, check FCA website and scam smart tool. Mr K: yes.

*Santander:* As long as you are aware of the checks you need to do and as you've been doing it for a couple of months, you should be OK...

*Santander:* I've given you all the information there and as long as you know what to look out for you should be safe from any type of scam....

Santander argue this went far enough, but I don't agree. While the call handler did give some warnings, on the other hand:

- He appeared to be running through a script, and in a hurried way.
- He appeared to be educating Mr K and reaching a conclusion for Mr K that he was safe from a scam. He almost indicated to Mr K that he wasn't at risk from the payments.

But - the call handler could see some relevant information which should've caused him to probe further:

- there was no other activity on Mr K's account other than the scam payments – and there had been two prior payments to the crypto wallet.
- And the first two payments had been funded by inwards credits on the same day .
- The payment for £20,000 was being funded by a loan and an inward transfer on the same day.
- The remaining balance was only £11.95.
- The third payment was to a crypto wallet.

Added together, all these were signs of a scam and it's reasonable that the call handler should've probed more – asking open questions. Santander was the expert in such matters and we would have expected them to ask questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How did you hear about the investment?
- How were you contacted about it?
- Where did the money come from that you're investing?
- Where is the money going to from your crypto wallet – to 'bitcoin'?
- Did anyone ask you or help you open the crypto account?
- What do you know about bitcoin investing?
- Have you made bitcoin investments before?
- How were you given the bank account details where the money was to be paid to?
- Have you given control on your devices to anyone else?
- Have you downloaded screen sharing software?

Santander would've found out that Mr K had been contacted via social media when responding to an advert 'endorsed' by a TV personality; that he was dealing via WhatsApp; that he had no investment experience; that he had borrowed £30,000 on three loans to fund the payments; that he had downloaded screen sharing software.

All of these were red flags and there was enough going on to persuade me that Mr K would've been warned about the risks involved and wouldn't have made the payments from the third payment onwards.

Therefore, in the first instance Santander should be liable to refund the final two payments - £28,000.

### *Contributory Negligence:*

But that's not the end of the story here. I also considered whether Mr K could've done more to protect himself and whether he should therefore reasonably share some of his losses. And I think he should. I say that as:

- I can see there were warnings online about firm A at the time (even though the FCA didn't publish a warning until December 2022). So, it's clear that Mr K didn't carry out sufficient checks himself.
- A reasonable person would have been wary about sending significant money - based on an internet contact. I didn't see any evidence of a contract, prospectus etc.
- Mr K didn't take any advice from a trusted source – which, as a bank employee, he could've accessed fairly easily.
- The returns alleged by firm A (investment value USD28,000 on £1,000 after a month) were clearly too good to be true, yet Mr K went ahead and sent more money.

For these reasons, I think it's fair that Mr K stands 50% of his losses.

### *Recovery:*

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Santander took the necessary steps in contacting the bank that received the funds – in an effort to recover the money. I can see the bank contacted the recipient bank in November 2023, and no funds remained to be repaid. Given that the scam took place in 2022, and Mr K complained to Santander in October 2023 – this wasn't a surprise – as normally in such scams, funds are removed from the recipient bank immediately. **(continued)**

### **Putting things right**

Santander should refund £14,000 (£28,000 less 50%) plus interest at 8% per annum simple from the date of the payments to the date of settlement.

### **My final decision**

I uphold this complaint. Santander UK Plc must:

- Refund £14,000 (£28,000 less 50%) plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 2 July 2024.

Martin Lord  
**Ombudsman**