

The complaint

Mr D is unhappy that Santander UK Plc has decided not to refund him after he says he was **the victim of an Authorised Push Payment (APP) scam**

What happened

Mr D received a cold call from a company about investing. Prior to the call he had no investment experience. Mr D was offered investment opportunities in the stock market saying he would make a plausible profit and he would be taught how to trade himself. Mr D says he was given a website link via email to check that the claims being made were genuine.

He says an online search came back with a top result for the company and it all looked genuine. Mr D could see live graphs of different stocks and their fluctuating values, and he could browse the different incentives available to clients. He said he knew the company headquarters were based abroad and he checked the FCA register and found no warnings for the company he thought he was dealing with.

Mr D Made an initial card payment for £250. And supplied various documents to complete KYC checks and verification. After the initial payment Mr D was able to log in to an account where he could view the account balance, and values of different currencies, as well options to buy and sell various currencies. Mr D says this was impressive and appeared professional. He was advised to make larger deposits to make the trades, and this was showing him good returns. He continued to invest and deposit larger amounts into the account. He downloaded remote access software and was directed at each stage where and how to move the funds.

Mr D says he was then told his trades weren't receiving returns and the funds in the account decreased. Then he was advised to invest direct into crypto currency to recoup his losses. When Mr D looked to withdraw the profits from his crypto account, he was told he would need to pay £50,000 to facilitate that. Mr D says he became concerned as the interaction from the advisers also become threatening. He says he called Santander who advised he had been scammed.

In total Mr D made eight card payments to an international crypto account provider and four bank transfers to an account held abroad, over a two-month period for a total of £134,430.02.

Mr D raised a scam claim with Santander. It looked into things and said as the payments were international transfers, so they weren't covered by the CRM code.

Mr D was unhappy with this response and said Santander owed him a duty of care to provide warnings. He said when they did intervene the questions they asked weren't probing and it didn't understand the true context of the payments. Had Santander done this Mr D says he would not have proceeded with the payments. Mr D is seeking full reimbursement of the payments made, plus 8% interest and £500 compensation.

One of our investigators looked into things. They attempted over a number of weeks to obtain all the calls between Mr D and Santander to establish what conversations were had at the time Mr D made the payments. He wasn't successful in obtaining all of these calls and proceeded on those that he was able to listen to or had transcripts for.

He ultimately came to the conclusion that Mr D had fallen victim to an investment scam. That Santander didn't provide effective warnings when it spoke to him, which occurred on several of the payments. And Mr D's actions were reasonable given; there were no warnings about the investment, the person Mr D dealt with seemed professional and, he saw positive online reviews about the business.

Santander didn't respond directly to the outcome, rather it attempted to provide more evidence of the calls it had with Mr D. The investigator reviewed this further evidence but didn't think it changed his findings.

As the complaint couldn't be resolved it has been passed to me to review. Further information has been provided by the bank which I have provided details of below. The banks notes, taken at the time Mr D first raised the complaint are contradictory to some of the background facts that Mr D and his representatives have set out. They say:

- Mr D said he didn't complete any checks on the company and was told they were regulated by the FCA. When asked for the FCA reference number he was given, this was checked, and it came up with a different company with no trading names similar to the company Mr D thought he was dealing with.

The bank transfers were going to Lithuania when Mr D had thought the company was based in Canada and Switzerland.

Mr D thought he was dealing with a subsidiary of the company. But when Santander carried out online searches there was nothing to suggest the subsidiary and company were linked and they were based in different countries.

It was Santander who contacted him when he attempted to make a further payment £50,000, which it had concerns about. It reviewed his previous account activity and could see a transaction history for foreign crypto and bank transfers. When Santander called Mr D it explained it sounded like a scam.

At the point of the contact from Santander Mr D hadn't received any actual returns into his bank account. But Mr D thought he'd accrued 1.3million euros in his trading account. Mr D thought he'd still be able to recover £300,000 but not the full 1.3million as he was told he'd need to pay the additional £50,000 for that to be released.

There are a number of calls between Mr D and Santander during the period that he made these payments. Most of the calls don't detail any questioning about the payments Mr D is making. In one call in February when Mr D is paying the crypto account, he is asked who is paying and why. Mr D says its in relation to some transactions he does, using a European company. Then bank caller then summarises saying Mr D is transferring money abroad using the company. He asks if Mr D has checked them out as being a genuine company because payments to the same destination had flagged a couple of times at that point. Mr D says they are genuine – there are no further details discussed about this.

Santander has also provided a detailed call transcript of a call where Mr D has attempted to make a £50,000 transfer that it blocked. During the details of Mr D's actions are fully exposed and the Santander call handler advises that he believes Mr D has been scammed. The Santander call handler asks questions about who Mr D is dealing with including all the different parties involved, what he's been told about the payment he needs to make and if he's received any actual returns into his bank account. He also researches the names and

companies Mr D says he's dealing with, to cross reference what he's been told. The caller handler also offered advice for Mr D to attempt to withdraw his current invested funds at that point and not be persuaded to make any further payments as he believed it is a scam. Mr D at this point says he will try to withdraw £300,000.

Mr D does attempt to make further payments the following month, but these are blocked and there are further conversations between him and Santander where it's explained that scammers often say they can retrieve lost funds, but this is also a scam.

I considered the complaint and issued a provisional decision. I've included my findings below.

What I've provisionally 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.

In the first instance, I'm persuaded this was in fact an APP scam. The very nature of the emails, the threats to pay more money, the intertwining of several businesses, the redirection of payments through a cryptocurrency platform and then direct bank transfers all appear, on the face of it, to be the actions of scammers, rather than genuine traders offering Mr D financial advice with the aim to carry out genuine "trading" or "investment" with Mr D's money.

As identified by Santander these payments are not covered by the Contingent Reimbursement Model (CRM) code. But I have taken into account other guidance and good industry practice, as well as Santander's account terms and conditions when thinking about what a fair outcome is, in this case.

The payments made to the scam were 'authorised'. So, even though he didn't intend the payments to go to a fraudster, the payments were 'authorised' under the Payment Services Regulations. Revolut had an obligation to follow the payment instructions it received, and Mr D is presumed liable for the losses in the first instance.

But that's not the end of the story. Taking into account the law; regulator's rules and guidance; relevant codes of practice; and, what I consider having been good industry practice at the time, and Santander's own account terms and conditions, I consider that Santander should:

- *Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.*
- *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 (amongst other things). This is particularly 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 its customers from the possibility of financial harm.*
- *Santander's general account terms say it can refuse a payment instruction "if we reasonably suspect it relates to fraud or any other criminal act".*

And as a matter of good industry practice, I think Santander ought fairly and reasonably to have done more here. Whilst I appreciate Santander is generally expected to follow payment instructions, that isn't an unfettered duty. Reasonable checks and balances are also required as part of the broad regulatory landscape to treat customers fairly and to safeguard against the risk of fraud or financial harm. I accept there's a limit to what can reasonably be done.

But in this case, I'm conscious that Santander had already disrupted the payment journey by blocking several of the payments and discussing them with Mr D. But I'm not persuaded that the subsequent action it took was proportionate in the circumstances to protect Mr D from financial harm or from fraud.

Whilst I don't have recordings or notes for all the calls Mr D had with Santander at the time he made the payments, it's evident that Santander had concerns, multiple times. The call notes where the Santander call handler says he thinks it's a scam are detailed and showed he took care in the questions he asked and thought carefully about the answers Mr D gave. At this time Mr D was attempting to make a £50,000, after having made approximately £130,000 worth of payments to the cryptocurrency payment gateway and foreign bank transfers in the two previous months. So, the detail and level of questioning was proportionate here, given what Santander knew about Mr D's account activity and value of the payment being made.

I don't think the same level of questioning would have been necessary for the first or second payments to the crypto payment gateway, given their value, the account balance and previous account activity. But having listened to the call from early on in the scam, after Mr D had made only two payments to the cryptocurrency gateway, I'm not satisfied that the questioning was proportionate. From the statements provided by Santander over £8,600 had already been paid to the cryptocurrency gateway in the few days prior, this appears to be out of character for Mr D, in terms of both value, and the destination account. I haven't seen any investment or payments to cryptocurrency providers prior to these. And the questioning by the bank member of staff is not detailed and doesn't bring to life what scams might look and feel like when it comes to investments or cryptocurrency.

Would better questioning have made a difference?

I can't be sure Mr D would have freely offered up all the information about what he was doing. But I am persuaded that, with the proportionate level of probing here, it would have been apparent, that Mr D wouldn't have been able to provide an adequate explanation that would have left Santander satisfied that he wasn't at risk of financial harm. Whilst Mr D thought the investment sounded plausible it had hallmarks of a typical scam even at those earlier stages. Including multiple layers of people and companies involved, too good to be true profits, dealing with unregulated firms based abroad, cold called introductions and being given step by step advice on how to make each payment and place each "trade". And although Mr D had access to what he believed was an impressive trading platform this is also a common feature of these types of investment scams.

I can see that Santander did intervene on or around the third payment Mr D made to the cryptocurrency gateway and I agree that was an appropriate intervention point. There's an indication that Santander may have intervened in the two earlier payments but its not clear from the evidence I've seen if any interaction occurred and if so, what the interaction entailed. But I'm persuaded the intervention prior to the third payment is appropriate in the circumstances. I have said already that I think better questioning would have exposed the scam (even if Mr D had not realised at this stage – Santander would have realised this was a scam or that Mr D was at risk of financial harm. So, this is the point at which Santander ought to be liable for Mr D's losses.

Should Mr D bear some responsibility for his losses and further information required in this case.

I've also considered if Mr D should bear some responsibility for his losses here. And as set out above there were multiple red flags about what he was doing that ought to have concerned him. Namely, the too good to be true offer of returns, the layering of different companies and how that information about where the money was going didn't match up with that information. I'm recommending that liability be split between Mr D and Santander. In order for this financial recommendation to be concluded in any final decision I will require Mr D to provide clear evidence of the origin of the funds used to finance these payments. I would add that it's likely that Mr D will be contacted again by scammers, given the amounts

he spent here and that he has fallen victim to this scam. Mr D needs to be aware that if he continues to make payments like this, he may not be reimbursed in the future. Santander also needs to consider what measures it can put in place to help protect Mr D from making payments of this nature in the future, given its very likely he will be targeted by scammer again.

My provisional decision

As set out above, I'm partially upholding this complaint. Mr D should receive a 50% refund of his losses from the point of the third payment made to the cryptocurrency provider, onwards. Plus 8% interest from the date of the payments to the date of settlement.

I'm not recommending any compensation as I haven't seen any need to do so here.

Mr D will need to provide the full source and origin of the funds that financed these payments in order for my final decision to move forward on this basis.

I'll give both parties two weeks to provide any responses, and the required information, before reviewing the matter again.

Both parties came back to my provisional findings to say they agreed with my recommendations. As such, I see no reason to depart from those findings.

I made further enquiries with Mr D and his representatives about the source and origin of funds for the payments that were ultimately made through his Santander account. I've now seen satisfactory evidence that Mr D is entitled to the refunds I have recommended and there is no other reason why he shouldn't receive the reimbursement amount.

This information was not provided by the deadline as set out in my provisional decision. Consequently I closed the complaint and informed Mr D and his representatives the information would need to be supplied within one month.

Santander agreed to the settlement payment, plus interest, and added that it would not look to apply further interest that accrued from the date of the complaint closure to the date the information was supplied by Mr D. I'm satisfied this is fair given the clear deadline set out in my provisional 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.

I partly uphold Mr D's complaint against Santander UK Plc. The findings are set out in my provisional decision which is included in this final decision.

Putting things right

I direct Santander to refund Mr D a 50% of his losses from the point of the third payment made to the cryptocurrency provider, onwards.

Plus 8% simple interest from the date of the payments to 19 February 2024.

My final decision

I partly uphold Mr D's complaint against Santander UK Plc and direct it to the make the

settlement payment as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 April 2024.

Sophia Smith
Ombudsman