

Complaint

Mr H is unhappy that Santander UK Plc didn't reimburse him after he fell victim to a scam. Mr H has brought this complaint with the assistance of a professional representative, but for simplicity's sake, I've generally referred to Mr H throughout the text of the decision.

Background

The background to this case is well known to both sides and so I don't intend to set it out in full.

Mr H fell victim to a 'job scam'. He was contacted on a messaging app by someone who offered him a job opportunity. The role was to be carried out remotely and Mr H was told he could earn up to £50 per day carrying out affiliate marketing tasks. Essentially, Mr H was asked to carry out tasks to boost the sales of merchants on an online market place. He needed to complete "missions" on an online platform and would earn commission having done so. However, he needed to pay in order to participate in this opportunity.

Unfortunately, Mr H hadn't been contacted by a genuine recruiter, but a scammer. When he wanted to withdraw his earnings, he was told that this would be subject to fees and charges. Specifically, I understand he was told he'd need to pay the higher rate of income tax on his earnings. He challenged the scammer on this because a significant portion of the money in his account was money that he himself had deposited. He was told that overpaid taxes would be returned to him within several days. According to Mr H's representatives, although he had his doubts "*he had invested so much money into this platform that he desperately wanted back – so he felt he had no choice but to send this money.*" He raised the money by borrowing it from members of his family.

In total, he transferred a little under £68,000 in connection with the scam in a period of around one month. When he realised he'd fallen victim to a scam, he notified Santander. It didn't agree to uphold his complaint. It said Mr H had made the payments to an account in his own name and so it didn't consider it could be responsible for the subsequent loss.

Mr H was unhappy with that and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator noted that Santander was expected to be on the lookout for payments that were unusual or out of character to the extent that they might have been indicative of a fraud risk. On spotting such a payment, it was expected to take steps to protect Mr H from the risk of financial harm due to fraud.

The Investigator identified a specific point during the scam at which she considered those concerns should've resulted in action by the bank. If it had taken action, she considered that Mr H would've been prevented from making subsequent payments in connection with the scam. She therefore recommended it refund all of Mr H's losses from that point onwards. She considered whether Mr H should bear some responsibility for his losses but was satisfied that he'd acted reasonably here.

She also thought that Santander's decision to close Mr H's account without notice wasn't justified and so she recommended it pay him £200 in recognition of the distress and

inconvenience this caused. Santander responded to the Investigator's view to say that it was willing to make an offer to settle the complaint, but that it didn't think it should be expected to refund all of Mr H's losses. It offered to refund half of his losses from the point the Investigator thought an intervention would've been justified. It also agreed to pay 8% simple interest per annum on those payments and to pay the £200 award for distress and inconvenience the Investigator had recommended.

Findings

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

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, that isn't the end of the story. Good industry practice required that Santander be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

Santander has accepted the Investigator's view that it should've done more here and so it has made an offer to settle the complaint. However, it thinks that Mr H should fairly and reasonably bear some responsibility for his own losses. On my first review of the file, my instinct was that Santander's offer was a fair and reasonable one in the circumstances. I contacted Mr H's representatives by email to set out my reasoning:

I'm currently minded to come to a slightly different outcome to the one reached by the Investigator. In the interest of fairness, I wanted to get in touch to set out my current thoughts regarding the case.

Santander has offered to pay 50% of the losses from the trigger point the Investigator identified. It has also offered to include 8% simple interest per annum on those sums and to pay the £200 distress and inconvenience she recommended. Having reviewed the file, I'm minded to say that's a fair offer and I'll explain why.

Broadly speaking, I agree with the Investigator's conclusion that Santander ought to have taken greater steps to protect [Mr H] from fraud here. The payments were out of character for the account. There were also other observable risk factors including that the payments were being made to a fairly new payee and that they were being made to a cryptocurrency platform.

However, I'm not persuaded that [Mr H] acted reasonably here and so I'm inclined to say that Santander should be entitled to make a deduction from any compensation payable. I think he ought to have been concerned at the very nature of the proposal - paying to participate in a job is a complete inversion of the employer-employee relationship and would strike most people as an unusual arrangement. In fact, [Mr H] appears to have found it unusual too. He sent a message to the WhatsApp group for other participants saying "I'm sceptical but I'll just take the risk for now and if it's a scam then oh well ..." In other words, [Mr H] made these payments in the face of a very clear risk that he himself had identified and so I'm minded to conclude that he was contributorily negligent.

I've also looked at the issues regarding the closure of [Mr H's] account with notice. Santander has agreed to pay the £200 the Investigator recommended and I think that's a more than reasonable offer in the circumstances.

Mr H didn't agree that Santander's offer was fair. He said that his comment about being willing to take the risk of it being a scam was made early on when the payments were small and so it wouldn't be such a big deal. It was only later on when he (and other participants) appeared to be earning returns that he thought the arrangement must've been legitimate after all. Mr H also said that he was suffering with significant health problems at the time and had been out of work for some time. Although he was initially sceptical, the apparent proof of returns made him disregard the possibility that it was a scam.

I've considered Mr H's arguments, but I'm still persuaded that the offer is fair. I accept that Mr H might've made a glib comment about being willing to take the risk that the job opportunity was a scam at the point he was making fairly small payments in connection with it. I can also understand why receiving returns would've helped to reassure him.

But when the scammers started asking him for extremely large sums of money, I'd be surprised if he didn't think that his initial suspicions that this might be a scam were justified after all. Indeed, according to the explanation given by his representatives, he was doubtful as to whether the arrangement was legitimate at the point he was making the large tax payments, but he'd sunk so much money into this job that he felt he didn't really have a choice.

Unfortunately, I think the evidence suggests Mr H recognised that there was a reasonable possibility that this was a scam but was willing to take the risk anyway. He acted in the face of that risk both in connection with the small initial payments and the larger payments that he was tricked into making later on. I've taken into account what Mr H has said about his health and that this scam took place at a very difficult time for him personally. Unfortunately, I'm not persuaded that this affected his judgement to the extent that he was unable to protect himself from the scam, particularly given that he appears to have been aware of the risks.

I don't say any of this to downplay or diminish the fact that Mr H has fallen victim to a cruel and cynical scam and it's not my intention that these comments come across as judgemental. I have a great deal of sympathy for him and the position he's found himself in. However, my role is limited to looking at the actions and inactions of the bank and I'm satisfied it's made a fair offer to settle the complaint here.

Final decision

For the reasons I've explained above, I uphold this complaint. If Mr H accepts my decision, Santander UK Plc needs to:

- pay him 50% of the money he lost to the scam from 13 April 2022 onwards.
- Add 8% simple interest per annum to those payments calculated to run from the date the payments were made until the date any settlement is paid.
- £200 for distress and inconvenience.

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

James Kimmitt

Ombudsman