

The complaint

Mr E holds a current account with Santander UK Plc. During 2022, some fraudsters contacted him and persuaded him to invest in cryptocurrency. But the investment scheme was fraudulent, and the fraudsters stole all (*) the money Mr E invested.

Mr E funded the fraudulent investment using money from his Santander account. He thinks Santander should have stopped him sending the money. As it didn't, he wants it to refund him the money he lost.

(*) I understand that Mr E may have received a small return payment from the fraudsters, but this was well under 5% of the value of the money he sent to them.

What happened

The fraudsters contacted Mr E through social media and convinced him they could help him to make money by trading in cryptocurrency. They instructed him what to do, including setting up an account with a payment service provider and with a cryptocurrency exchange. They were very sophisticated and plausible, and Mr E followed their guidance. They showed him false data on the money he was (allegedly) making. When asking for money, they told him to first transfer it to the payment service provider and then to the cryptocurrency exchange, from where they stole it.

In connection with the fraud, Mr E made 11 separate payments from his Santander account. I have provided brief details of them in the following table. I have rounded all values to the nearest £pound.

Payment number	Date	Amount	Cumulative amount
1	24 August 2022	£213	£213
2	1 September 2022	£5,000	£5,213
3	10 January 2023	£10,600	£25,813
4	18 January 2023	£15,000	£40,813
5	19 January 2023	£16,500	£47,313
6	20 January 2023	£15,000	£62,313
7	24 January 2023	£15,000	£77,313
8	24 January 2023	£15,000	£92,313
9	24 January 2023	£15,000	£107,313
10	24 January 2023	£15,000	£122,313
11	24 January 2023	£5,000	£127,313

Mr E made payment 1 using a debit card linked to his Santander account. It went to an online account in a different name, and then onto the fraudsters. He made payments 2 to 11 using Santander's electronic system for fast online payments. They all went to an account in his own name with the payment service provider. He then used this account to invest in the cryptocurrency account and the fraudsters stole his money from there..

One of our investigators has already looked into Mr E's complaint.

The investigator thought Santander should take some responsibility for Mr E's loss and recommended that it should refund him around half of the money the fraudsters stole. Mr E accepted this recommendation, but Santander didn't. It asked for the complaint to be reconsidered. So, it has come to me as an ombudsman to make a final decision on a fair outcome.

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.

Sadly, fraud has become too common a problem in the finance industry and fraudsters steal money from their victims in different ways. The type of fraud Mr E suffered is known as Authorised Push Payment (APP) fraud. In these cases, fraudsters fool their victims into sending money for goods or services, or an investment opportunity, or a romance, or something else, which they never intend to provide.

When Mr E sent the money to the payment service provider, he followed Santander's normal banking and security procedures. By doing so, he authorized and instructed Santander to make the payments for him.

It seems to me that while banks are normally expected to act on their customers' instructions, they also have a role to play in trying to stop fraud. At the time of this fraud, I think it would have been fair and reasonable for Santander to be looking out for unusual payments, or unusual patterns of payments, in the way its customers were using their accounts. And if it saw anything suspicious, I would have expected it to check with the customers concerned to find out if they really wanted to go ahead. However, in correspondence with us, Santander seems to disagree about my expectations. It has based its opinion on the outcome of a recent case in the Supreme Court.

Santander has told us that the court case established that if a customer's account is in credit and the customer instructs a bank to make a payment, the bank has a "*strict duty*" to "*execute*" the instruction "*without concerning itself with the wisdom or risks of the customer's payment decision*". I understand that Santander therefore thinks it shouldn't carry out the type of anti-fraud checks I have described, as it believes the outcome of the court case could prevent it from undertaking them.

I fully accept that the court case reiterated that banks generally have a contractual duty to make payments according to their customers' instructions. But I do not agree with the way Santander has interpreted the court case and applied it to Mr E's complaint.

Amongst other things, the court case established:

- The starting position is that it is an implied term of any current account contract that where a customer has authorized and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- The express terms of the current account contract may modify or alter that position. For example, contracts may permit banks not to follow their customers' instructions where they reasonably believe the payment instruction was the result of APP fraud; but that having the right to decline to carry out an instruction is not the same as having a duty to do so.

When this fraud happened, Santander's terms and conditions said that it could "*Refuse any payment instruction if it reasonably suspects it relates to fraud or any other crime*"... and... "*delay payments while fraud prevention checks take place*". The terms and conditions go on to say that as part of the fraud prevention checks, Santander may contact its customers by phone.

So, it seems to me that at the time this fraud happened Santander had an implied duty to process its customers' payments promptly, but it also had a contractual right to make enquiries about payments, and/or block them, to protect its customers from fraud. So, I do not think the outcome of the court case prevented Santander from making checks before processing Mr E's payments, even though I accept that it may not have had a legal obligation to do so.

I am therefore satisfied that taking into account the law, longstanding regulatory expectations and requirements and what I consider was good practice at the time, Santander should *fairly and reasonably* have been on the look-out for the possibility of APP fraud and in some circumstances should have taken additional steps, or made additional checks, before processing its customers' payments.

In practice, all UK banks, including Santander, do this. Santander mentions it implicitly on its website which currently says it wants to "*protect (customers) from fraud and scams*"...and "*uses the best technology and banking security to help (customers) manage (their) money safely*". So, it seems to me that to act fairly and reasonably towards its customers, Santander should:

- 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 (amongst 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 made additional checks, or provided additional warnings, before processing a payment.
- Have been mindful of, amongst other things, common scam scenarios, the evolving fraud landscape (including, for example, the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

Santander did not intervene before processing payments 1 and 2. I have looked at the way Mr E used his account and I think this was reasonable. Those two payments were not particularly unusual for him. However, despite Santander's comments about the court case, it seems to have considered that payment 3 was suspicious. It initially blocked the payment and asked Mr E to call its security team, which he did.

Making the intervention was, of course, totally in line with Santander's terms and conditions, and I certainly agree that payment 3 was suspicious. However, I have listened to a recording of the subsequent phone call, and I do not think Santander warned Mr E about the risk of fraud with sufficient gravity or seriousness.

The call lasted around eleven and a half minutes. At the start of the call, Santander told Mr E that the reason it had blocked the payment was to check that he was *“the person making the payment.... (and that)....the payment was going to the correct destination...sort code and account number”*.

It took Santander around four and a half minutes to check Mr E's identity. I fully accept this was important and essential, but during this time, Santander said nothing to alert Mr E to the type of fraud risk he was facing. Similarly, for much of the last four minutes of the call, Santander placed Mr E on hold while it seemed to be checking the details of the destination account. Again, this can be useful, and Santander was absolutely right to make this check, but it did nothing to bring the risk of this particular type of fraud to Mr E's attention.

During the middle of the call, Santander asked Mr E what the payment was for. He replied that he was moving money from his Santander account to his own account with the payment service provider. Obviously, Mr E's answer was truthful. It flowed naturally from Santander's explanation of why it had blocked his account. But it didn't describe in any way what he was moving the money for, which was solely to follow the fraudsters' instructions.

I would have expected Santander to ask some more probing follow-up questions to find out more, but it didn't. Instead, it asked some rather narrow questions, all of which seem to have related to *safe account* or *impersonation* frauds. Once again, these questions themselves were sensible and could have been useful in different circumstances, but they weren't relevant to Mr E's situation. Santander did not mention investment frauds or highlight the risks that can be associated with investing in cryptocurrency. Had it done so, I think the fraud could have been stopped at that point.

At the end of the call, Santander processed payment 3. It made no further checks on any of the later payments. I therefore think that Santander should take some responsibility for the losses resulting from payment 3 and those that came afterwards. However, I also think that Mr E should retain some responsibility for these losses.

The fraud started in August 2022. It seems to me that between then and January 2023, when most of the losses occurred, Mr E had ample time to make some enquiries about the investment he was making. Had he done so, he may well have uncovered the fraud for himself, without needing Santander's help. Similarly, although during the phone call he answered all Santander's questions honestly, he wasn't particularly forthcoming about what was going on. If he had been more open, he may well have helped Santander to help him spot the fraud. I therefore think it's fair for Mr E and Santander to take equal responsibility for the losses from payments 3 to 11.

In correspondence with us, Santander has told us consistently that it thinks the payment service provider should take responsibility for Mr E's loss. Amongst other things it has said it *“strongly believes that (Mr E) should be pursuing the claim/complaint with (the payment service provider).... because his...loss was from (his) account with them”*. It's also said that it has *“not made any payments to the scammers and therefore there has been no loss from the Santander account”*. It has asked us to tell Mr E to complain about the payment service provider.

While I accept the sincerity of Santander's opinion, I do not agree with it. Fraudsters frequently fool their customers into sending them money in several stages through more than one account, often involving cryptocurrency. This is part of the *multi-stage fraud landscape* I mentioned above. And I am certainly not going to tell Mr E who he should or shouldn't complain about. That is a decision for him, not me.

I do not think that the stages in this fraud meant that Santander had no responsibility to protect Mr E. I think that to act fairly and reasonably it should have been looking out for

frauds of this type. Had Santander asked appropriate questions in the phone call, I see no reason why it couldn't have stopped the fraud then and there, despite the stages involved.

So, in summary, I don't think that Santander should take any responsibility for Mr E's losses from payments 1 and 2. But, it seems to me that it's fair for Santander and Mr E to take equal responsibility for the losses stemming from payments 3 to 11. It follows that I think Santander should put things right for Mr E by paying him an appropriate refund.

Before closing, I would like to express my heartfelt sympathy to Mr E for what happened to him at the hands of the fraudsters. As well as causing financial loss, falling victim to fraud can be very upsetting and I gather Mr E has suffered a lot of stress because of what the fraudsters did to him. I hope he never has to face a similar situation again.

Putting things right

To put things right for Mr E, Santander should:

- refund him half the value of payments 3 to 11,
- add 8% per year simple interest to each of the refunds from the dates of each payment until the date it makes the refund.

My final decision

For the reasons I've given above, I think Santander UK Plc was partly responsible for Mr E's losses due to fraud. If Mr E accepts this decision, then Santander should put things right for him by paying him the refunds I have already described

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 11 May 2024.

Steve Townsley
Ombudsman