

## The complaint

Mr K complains that Santander Bank PLC (“Santander”) have failed to refund money that Mr K lost as part of an investment scam.

## What happened

Mr K was contacted by someone who said they worked for a crypto trading company that I will call B. From what I can see Mr K made one debit card payment of £217.52 to a computer software company and one transfer of £10,000 to an Electronic Money Institution that I will call D. Mr K said in relation to the transfer, the funds were converted into Bitcoin by D and Mr K then forwarded it on to B.

Mr K then tried to withdraw the “profits” that he had made from B. When he was unable to do so he realised that he had been scammed.

Mr K raised a complaint with Santander, as he believed that Santander should have stopped him from making the payment in question.

I issued a provisional decision on 26 July 2024 in which I said the following;

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

*It isn’t in dispute that Mr K authorised the disputed payments he made from his Santander account (where his funds were subsequently transferred on to the scammers). The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr K’s account is that he is responsible for payments he’s authorised himself.*

*Overall, 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 made additional checks, or provided additional warnings, before processing a payment — as in practice all banks do.*

- Have been mindful of — among 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.

*In this instance Mr K had made large payments in the past, but these were to existing accounts that Mr K held. This was a large transaction to a new payee and was to an EMI that was commonly used for crypto transactions. This to me means that Santander really should have intervened and asked questions as to what the £10,000 payment was for. I note that Mr K was asked online what the payment was for and he selected savings, but in this instance, given the unusual nature of the payment and where it was going, I don't think that this was enough.*

*Had it done more, such as asking further questions, I think it would have discovered that Mr K was sending funds to D to convert in crypto to send to an investment platform that he had found online. I think it would have discovered that Mr K was using a broker who had asked him to install remote access software and that he was going to receive returns of 7% for “gap*

*trades”. This would have put Santander on notice that Mr K was likely being scammed. Had it then provided Mr K with information about the common features of crypto scams and that B were likely scammers, I do not think that Mr K would have carried on with transaction 2. It therefore follows that, had things gone as they should've, I think Mr K would not have gone ahead with payment 2 or the payments afterwards.*

*I've considered carefully whether Mr K should hold some responsibility for his loss by way of contributory negligence. In this instance it is unclear what research Mr K did prior to investing. I say this because there was limited information about B available at the time online. Mr K was promised 7% return per trade which was unrealistic and the explanation of how the trades would make money did not make sense which should really have made him question if B was legitimate. So overall, I am not satisfied that Mr K took appropriate steps to establish what B was doing was legitimate.*

*Having considered everything, I think that Mr K contributed to his own loss. Because of this, I think that it would be appropriate to reduce the amount of compensation due to Mr K by 50%.*

*I've also thought about whether Santander did enough to attempt to recover the money Mr K lost. I say this as there are some instances where debit card transaction can be refunded through making a chargeback claim. But in this case, I don't think that Mr K has provided enough for Santander to have attempted a chargeback for the debit card payment.*

*In relation to the transfer, the Contingent Reimbursement Model does not apply when the funds are transferred between accounts held by the same person. Also, by the time Santander was made aware of the scam, the funds had been transferred from D. So I don't think it could have recovered the funds by contacting D to recall them.*

*I note that the investigator recommended that the liability be split between Santander, D and Mr K, so that Santander needed to refund 33% of transaction 2. But I have reviewed Mr K's complaint against D and have issued a provisional decision in relation to that case. In that case, I didn't think that D could have prevented the scam given what type of institution D is and due to B remotely doing the transaction from D to B rather than Mr K. So it follows that I currently believe liability should only be split between Santander and Mr K.*

*Putting things right*

*So, to put matters right, I currently intend to require Santander to do the following:*

- *Refund 50% transaction 2; and*

- *Add 8% simple interest annually on the amount owed, from the date of the payment to the date of settlement, less any tax lawfully deductible.”*

Mr K, via his representative, accepted my provisional decision. Santander did not agree with my provisional decision and raised a number of points. These included in summary:

- The transaction of £10,000 was not unusual account activity.
- A conversation with Mr K would not have prevented the scam as there were no warnings on the FCA register about B at the time.
- Mr K did not authorise the payment from D, so D is liable to refund the missing money, not Santander.
- That I am holding Santander to a higher standard of care than D.

### **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.

Firstly, I should highlight that Santander are aware of our approach in relation to multistage fraud, so I will not go into detail about that. I will though address the points that they have raised.

In relation to the transaction not being unusual account activity, I agree that Mr K had made large payments in the past. But this payment was unusual as it was to a new payee and was to a company that specialises in crypto payments. Santander should really have been aware of the risks of crypto scams by the time the transaction was made. It also should have been aware that people often transfer funds from their main bank account to an account in their own name, before sending the funds to the scammer. So in this specific instance, I think that this transaction should have prompted a proportionate intervention from Santander.

Had it done this and asked Mr K about the payment he was making, I think that Santander would have discovered that it was for a crypto investment; that B had asked him to install remote access software; and that B was going to trade on his behalf. I say this because there is no indication that Mr K was being coached on what to say to Santander. I accept that there were not specific warnings about B at the time of the scam, but the features of the scam were so indicative of a typical crypto scam, I think that Santander could have provided a warning that Mr K was almost certainly being scammed. I think that a warning from his trusted bank would have been heeded by Mr K and I don't think he would have made the transaction in question, which means that I think that Santander could have stopped the scam if it had intervened. So, I think that it was Santander not intervening that caused Mr K's loss.

In relation to the payments from D to B not being authorised by Mr K, I accept that I said in my provisional decision that Mr K did not make this payment, B did. To expand on what I said, whilst Mr K did not make the payment himself this does not mean he did not consent to it being made. The payments were made using his legitimate security credentials provided by D. In his submissions to D, it is clear to me that Mr K knew and had agreed for the payment to be made from D to B. So even though Mr K was tricked into thinking that once it got to B, it was going to be used to make legitimate trades, he did consent to the payment being made, even if he did not make it himself.

Mr K's account with D was newly opened and my understanding is that the reason given by Mr K why he opened the account was to transfer his money to B so as to 'invest' in crypto. This means that D were unaware of what a usual transaction was for Mr K and further that, converting funds into crypto and sending it on would not have seemed particularly unusual.

This is unlike Santander, who knew that Mr K did not routinely send funds to companies linked with crypto. That said, I do think that D should have intervened and taking everything into consideration I think a proportional intervention would have been a tailored online warning. I don't think that this warning would have stopped the scam though. I say this because B was making the transaction for Mr K using remote access and I don't think that an onscreen warning would have stopped the scammer from sending the funds. Even had Mr K noticed the warning - although I think that this was unlikely as he said that the scammer was doing things too quickly for him to completely follow - I think that the scammer would have carried on with the transactions before Mr K had time to stop what the scammer was doing. So given this, whilst I think D should have intervened, I don't think that it could have stopped the scam.

As I don't think that D could have stopped the scam with a proportionate intervention, I think for the reasons set out above and in my provisional decision that the liability should be shared between Santander and Mr K.

So in summary, I think that Santander should have intervened when payment 2 was made that this would have stopped the scam. I also think that Mr K contributed to his own loss and therefore Santander should refund 50% of the transaction from that point.

I also do not think that Santander could have recovered Mr K's payments via other means.

### **Putting things right**

For the reasons given above, I uphold this complaint in part and direct Santander Bank PLC to:

- Refund the payments Mr K lost to the scam from and including transaction 2 onwards. Then reduce this by 50% in recognition of Mr K's own contributory negligence towards his loss.
- Pay 8% simple interest per year on this amount, calculated from the date of each payment until the date of settlement, minus any applicable tax.

### **My final decision**

My decision is that I uphold this complaint in part and direct Santander Bank PLC to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 13 September 2024.

Charlie Newton  
**Ombudsman**