

The complaint

Mr S complains that Santander UK Plc won't reimburse him after he fell victim to an investment scam.

What happened

Mr S has explained that he was introduced to an investment opportunity by a friend, who was already signed up to the opportunity in question and making profits. Mr S downloaded an app on his phone from which he understood he could make money through cryptocurrency. His understanding was that by making deposits to the platform via a cryptocurrency merchant, the platform used these funds to buy and sell different cryptocurrencies, in order to make profits. However, unknown to Mr S at the time, this was in fact a scam, now believed to be a Ponzi scheme. In total, Mr S made the following payments to a cryptocurrency platform from his Santander account, before transferring the cryptocurrency funds onwards to the scam:

Date	Payment	Comments
14/10/2023	£500	Card payment to cryptocurrency
14/11/2023	+£772.38	Credit received from scam
17/11/2023	£700	Card payment to cryptocurrency
20/11/2023	£2,608	Card payment to cryptocurrency
20/11/2023	+£1,268.34	Credit Mr S made back from his cryptocurrency account

Mr S has explained that after making the payments, he tried to withdraw his funds but was unable to. He was told that if he deposited a further £100, his withdrawal would then be possible. At this point Mr S realised he'd fallen victim to a scam and contacted Santander to raise a claim.

Santander considered Mr S' claim but didn't uphold it. Santander has said that Mr S authorised the payments himself and doesn't consider he completed sufficient checks, prior to investing.

Mr S remained unhappy and referred his complaint to our service. An investigator considered the complaint and upheld it in part. He thought that by the time Mr S made the final payment of £2,608 towards the scam, there was sufficient unusual activity on Mr S' account that Santander ought to have been concerned and made further enquiries prior to processing the payment. The investigator considered that had Santander asked tailored questions about the payment he was making, this would have uncovered the scam. The investigator therefore considered Santander should refund this final payment, minus the credit of £1,268.34 that Mr S withdrew back to his account.

Mr S agreed with the investigator's outcome but Santander didn't. To summarise, it said that:

- Santander has fraud detection systems in place to mitigate risks, but there is no obligation or expectation that banks should detect and prevent every payment made that turns out to be a scam.
- All payments made towards the scam were to a cryptocurrency wallet held on Mr S' name, therefore Santander was not the institution which made payments to the fraudster. Santander would not have known that these payment instructions arose from a fraudster's attempt to misappropriate funds.
- While the cryptocurrency account Mr S used may not be signatory to the same Codes that Santander is, that does not mean it's fair or reasonable to look to Santander to reimburse, rather than the cryptocurrency platform.

As Santander disagreed with the investigator's view, the complaint has been referred to me for a final 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.

Under regulations, and in accordance with general banking terms and conditions, banks and building societies should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even if they were duped into doing so, for example as part of a scam.

However as a matter of good industry practice and longstanding regulatory requirements, where there are grounds to suspect that the payment instruction might be likely to result in financial detriment to a customer through fraud or a scam, then I'd expect a bank to delay executing the instruction until the bank can reassure itself that such harm will not result.

The payments were made using Mr S' debit card and there's no dispute here that he authorised them. Mr S is therefore liable for payments unless there is evidence that Santander could and should have done more to protect him, which is the issue I've considered.

Should Santander have fairly and reasonably made further enquiries before approving Mr S' card payments?

In this case, in October 2023 when Mr S made these payments, Santander would have been aware of the increasing prevalence of scams using cryptocurrency as a payment channel. When Mr S made these payments, Santander would've been able to identify that the payment destination was a cryptocurrency platform. Since 31 July 2023, the Financial Conduct Authority's new Consumer Duty has also come into force, placing an obligation on firms to avoid foreseeable harm to its customers.

With this in mind, I think it's fair to say that Santander ought to have been more alert to payments being sent by its customers to cryptocurrency platforms. In Mr S' case, while the first two payments towards the scam were lower in value, the third rose significantly in value. This meant that within three days, Mr S had made payments totalling over £3,300 to cryptocurrency, despite there being no indication from his account statements that this was something he had done in the past - and this final payment being the highest transaction on his account (exceeding his monthly salary), other than transfers to an established bank account in his name. Based on these factors, I think there was enough going on that Santander ought to have taken proportionate intervention, such as asking specific questions

about the payment in order to provide a tailored warning, prior to processing Mr S' third payment.

Had Santander asked specific questions about the payments Mr S was making (for example, whether Mr S was able to successfully withdraw funds, and whether funds remained in his cryptocurrency wallet), I think it would have been able to identify that Mr S was at risk of falling victim to an investment scam and provided a tailored warning on this type of scam. Mr S has explained he was asked to pay a further £100 to withdraw his funds but didn't do so, believing he was being scammed at this point. Had Santander provided a warning that resonated with his circumstances I therefore think this would've been sufficient to break the spell he was under sooner, as it appears he wasn't so entrenched in the scam that he wouldn't have been open to guidance by his bank.

I'm also satisfied that Santander can fairly and reasonably be held liable for Mr S's losses, despite him paying funds to a cryptocurrency wallet in his own name before sending them to the fraudster. I say this because the potential for multi-stage scams such as this ought to have been well known to Santander at the time and Santander therefore ought reasonably to have been alert to payments presenting an additional scam risk, including the hallmarks of a multi-stage scam where payments to cryptocurrency accounts in a customer's name are more commonplace.

To be clear, I do not suggest that Santander should provide a warning for every payment made to cryptocurrency (and as can be seen here, I'm not suggesting Santander was required to for payment one or two to this scam). Instead, as I've explained, I think it was a combination of this being a second payment within a short space of time, far higher in value than the others *and* to a cryptocurrency platform, which doesn't reflect Mr S' usual account activity and which ought to have prompted a warning.

I've also considered Santander's point that it was not the point of Mr S' losses and Mr S should therefore direct a claim against the cryptocurrency provider in question. Whether or not the money was lost at the point it was transferred to cryptocurrency does not alter the fact that I think Santander can fairly be held responsible for Mr S' loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against either the firm that is the origin of the funds or the point of loss.

I accept that it's *possible* that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Mr S could instead, or in addition, have sought to complain against those firms. But Mr S has not chosen to do that and ultimately, I cannot compel him to. In those circumstances, I can only make an award against Santander.

Ultimately, I must consider the complaint that has been referred to me (not those which haven't been or couldn't be referred to me) and for the reasons I have set out above, I am satisfied that it would be fair to hold Santander responsible for Mr S' losses for the final payment he made to the scam from his Santander account

Should Mr S bear any responsibility for his losses?

I've therefore gone on to consider whether Mr S should also be held partially responsible for his losses on the final payment he made towards the scam. Having considered the complaint holistically, I don't think he should. Mr S had become involved in the scam on the recommendation of a friend who was using the platform and making money successfully. I think this would've been compelling to Mr S and provided assurances that the platform was genuine. By the time he made the third payment, he'd also been using the application for around a month and appeared to be making returns himself, despite not having withdrawn these yet. The application he used was downloaded through what appeared to be legitimate channels, and was done by Mr S on his own accord, rather than following unrequested contact from a fraudster. While there are now FCA warnings regarding the application Mr S used, these weren't present at the time he invested. I therefore don't think that there were significant warning flags here that Mr S proceeded in spite of, that would mean he should also be held jointly liable for his losses.

Recovery

Finally, I've thought about whether Santander could've done more to recover the funds after Mr S reported the fraud. Given Mr S made the payments by card, I've considered whether Santander could have raised a successful chargeback claim. However, as the payments went to a genuine cryptocurrency account, that transferred funds as requested into cryptocurrency, I don't think a chargeback claim would have had any reasonable prospects of success – the firm who received funds having completed the service requested.

My final decision

My financial decision is that I uphold Mr S' complaint in part. I direct Santander UK Plc to refund Mr S:

- The final payment he made towards the scam of £2,608, minus the funds he then withdrew back to his account (£1,268.34), totalling £1,339.66
- Apply 8% simple interest, from the date Mr S made this payment, until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 December 2024.

Kirsty Upton
Ombudsman