

## The complaint

Mr C complains that Santander UK Plc did not refund all the money he lost to a scam.

## What happened

Mr C was added to a messaging group about investments, led by an individual who appeared to be a knowledgeable broker. After some time, Mr C decided to invest and downloaded an official looking app on his mobile phone that gave him access to trades and he began investing. This eventually turned into cryptocurrency investments, which he facilitated using accounts in his own name on cryptocurrency exchanges. When he was asked to pay tax to receive his returns, he refused to pay, was blocked by the broker and no longer had access to the app. It was at that point that he realised he had been the victim of a scam.

Following this, in around February 2023, Mr C found a company who could help him recover his funds from the investment, and he was persuaded to purchase and trade more crypto as part of the process. After paying larger and larger sums, he still did not receive any of his lost funds back, and again realised this was also a scam. He raised a scam claim with Santander for the following payments:

Date	Amount (£)	Notes
04/10/22	550	
19/10/22	2,000	
06/12/22	1,000	this was returned to Mr C's account shortly afterwards
07/12/22	1,000	
09/12/22	1,000	
25/12/22	1932.92	
08/01/23	3,091.74	
13/02/23	5,230.84	
21/02/23	5,000	
08/03/23	500	
08/03/23	500	
09/03/23	260	
14/03/23:	4,400	
20/03/23	5,000	
21/03/23	4,000	
23/03/23	3,500	

Santander explained that the first three payments were covered under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code, as the funds went directly to an account in the scammer's control. And they agreed they had not met their obligation under the code as they didn't provide an effective warning, whereas Mr C did meet his obligations under the code. So, they provided a full refund of the first three payments totalling £3,550. But they did not agree that they needed to reimburse Mr C with the remainder of the lost funds.

Mr C referred the complaint to our service and our Investigator looked into it. They felt that the payment of £3,091.74 on 8 January 2023 should have been picked up for additional checks, as it was identifiably going to cryptocurrency, which was a recent change in how the account had been operated previously, and a pattern was beginning to emerge that resembled fraud.

The Investigator saw that some later transactions had been picked up for further checks, but Mr C had not been asked probing questions about them or the investments he was making. And they felt that had more detailed questions been asked the scam would have been revealed. They also explained that Mr C had been suffering from serious medical issues which affected his cognitive abilities, so did not think he should bear any liability for the loss himself. They therefore recommended a full refund of the transactions from the payment of £3,091.74 onwards, plus 8% simple interest.

Mr C accepted the findings however Santander did not agree. In summary, they felt they had provided warnings to Mr C over the phone which covered scams where a broker was present and that Mr C had mentioned he was at work in one of the calls which suggested he could carry out day to day activities, so they had concerns over his vulnerability.

As an informal agreement could not be reached, the complaint has been passed 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.

I firstly want to clarify that I agree the first three payments (not including the £1,000 that was returned to Mr C's account shortly afterwards) are all covered by the CRM Code. As Santander has already reimbursed Mr C in full for these payments, I haven't considered them further in this decision. In addition, Mr C's representative has mentioned another payment of £1,000 that was made on 24 April 2023 that they feel may be connected to the scam. This was made after Mr C raised a scam claim and doesn't fit the same pattern of transactions, in any event Mr C should raise this directly with Santander as they have not had the opportunity to review this. As a result, I've not considered this transaction in the decision.

The remaining transactions are not covered under the CRM code as they went to other accounts in Mr C's name before being passed on to the scammer. However, Santander still had a duty of care to protect Mr C's account from financial harm.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr C authorised the payments in question as he believed they were part of a legitimate investment. So, while I recognise that he didn't intend the money to go to scammers, the starting position in law is that Santander was obliged to follow Mr C's instruction and process the payments. Because of this, he is not automatically entitled to a

refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Santander did enough to try to keep Mr C's account safe.

Looking at Mr C's statements, I can see he did carry out some larger transactions in the months leading up to the scam. However, I can't see that he had made payments to cryptocurrency before, so I do think this was a change in the account usage. I don't think Santander reasonably needed to intervene in the first few cryptocurrency related transactions, but I can see over time the amounts started to increase. And I think it would be reasonable to expect Santander to have intervened on the £3,091.74 payment on 8 January 2023. I think by this time, Santander should have been aware of the increased scam risk attached to cryptocurrency, so the sudden account usage related to crypto, along with the increasing values of the payments, should have been seen as unusual.

I can see that Santander did intervene in some of the later payments, and I've listened to the phone calls provided. While Mr C was read a script in some of the calls which covered various scam types, including investment scams, I don't think they went into sufficient detail with Mr C about how he could personally be affected by such a scam. And aside from asking the purpose of the payment, he wasn't asked any more probing questions, such as how he came about the investment opportunity, what he was investing in or what returns he was expecting. And I think these basic questions would have revealed that he was the victim of a scam and therefore could have prevented him from making further payments. With this in mind, I think Santander should refund Mr C from the payment of £3,091.74 onwards.

I've gone on to consider whether Mr C should reasonably bear some responsibility for the losses as a result of any negligence in his actions and if it is therefore reasonable for me to make a reduction in the award based on this. In doing so, I've considered whether Mr C has acted as a reasonable person would to protect himself against the loss he suffered. The test is objective but needs to take account of the relevant circumstances.

In doing so, I've taken on board Mr C's ongoing medical issues he had throughout the scam, which would have become more severe over time. Mr C has said he sought regular treatment throughout this time and eventually had to retire from his profession, however the effects of the treatment would have been present even when he was still in employment. In addition, Mr C was 77 at the time of the scam and had recently separated from his partner and was suffering from depression. So, overall, his ability to make rational decisions was diminished at the time of the scam.

I have taken on board Santander's comments that Mr C informed them he had not received any paperwork or carried out any checks on the company before carrying on with the investment, and the follow up investments he was encouraged to make to try and recover his funds in February 2023. Though I also note that they deemed Mr C had a reasonable basis to believe he was paying for a legitimate service when they upheld the earlier CRM payments. On balance, considering Mr C's age, situation at the time and medical issues, I don't think he can be considered negligent in this particular case, so I don't recommend a reduction in the redress.

### **Putting things right**

Santander should now reimburse Mr C from the payment of £3,091.74 onwards. And it

should apply 8% simple interest from the date of the transactions to the date of settlement.

**My final decision**

I uphold Mr C's complaint against Santander UK Plc in part, and recommend the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 July 2024.

Rebecca Norris  
**Ombudsman**