

The complaint

Mr M complains that Santander Bank PLC (“Santander”) have failed to refund money that Mr M lost as part of two scams.

What happened

Mr M was contacted by someone who said they worked for a crypto trading company that I will call B. Mr M made a number of payments to an Electronic Money Institution that I will call D the funds were then sent to a crypto exchange, converted to crypto and sent to B. When Mr M attempted to withdraw funds from B, B stopped responding.

Subsequently a different scammer contacted Mr M, who I will call C. C said it could recover the funds that Mr M had lost. When the refund did not materialise Mr M realised he had been scammed again.

The payments Mr M made were as follows;

Transaction Number	Date	Amount	Type of Payment	Scam
1	9 May 2023	£20,000	Faster Payment	B
2	10 May 2023	£20,000	Faster Payment	B
3	11 May 2023	£20,000	Faster Payment	B
4	12 May 2023	£18,300	Faster Payment	B
5	19 May 2023	£18,000	Faster Payment	B
6	21 May 2023	£20,000	Faster Payment	B
7	1 June 2023	£20,000	Faster Payment	C
8	2 June 2023	£2,678	Faster Payment	C

One of our investigators looked into this matter. They decided that Santander’s intervention for payment 1, in which it provided a warning, was sufficient. But when payment 2 was made, a further intervention should have occurred. They concluded that, had probing questions been asked at this point, this would have likely stopped the scam. They decided that liability should be shared between Santander, D and Mr M.

Santander did not agree with this and therefore his complaint was passed to me to issue 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons.

It isn't in dispute that Mr M 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 M'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.

I am mindful in reaching my conclusions about what Santander ought fairly and reasonably to have done.

Payment 1

In this instance Mr M had not made payment of this size before. So I think that Santander should have provided a warning based on the payment reason that Mr M provided for this transfer. In this instance, Mr M selected that he was sending money to his own account. In response, Santander asked a few further questions and asked if Mr M was happy making the payments and he confirmed that he was. Based on the answers Mr M provided, that he was transferring funds to his own account, that nobody had told him to lie or mislead the bank and that he was not told to move money to another account, I think that Santander's intervention was proportionate for this transaction.

Payment 2

At this point I think that Santander should have asked further questions as this represented £40,000 sent to a new account that Mr M had not sent funds to before. Had it done more, such as asking further questions, I am satisfied that Mr M would have been honest about where he was sending the funds. I say this because in calls with D around this time, he was forthcoming about what he was intending to do with the funds. The only reason that D did not uncover the scam during calls at this point, in my view, is that it failed to ask questions such as where did you find the investment, are you using a broker and are the funds going to stay with the crypto exchange?

So had Santander asked questions such as these, and I think it really should have, I think it would have likely discovered that Mr M was sending funds to convert into crypto to then send on to an investment platform that he had found online. I think it would have discovered that Mr M was using a broker, he had been guaranteed large profits and that had it asked B's name, it would have seen that there was an FCA warning at the time about B. This would have put Santander on notice that Mr M was likely being scammed.

I can see that there are notes that indicate that during an intervention about payment 8, Mr M did not provide accurate answers as to what he is doing. I don't though think that Mr M would have done the same earlier in the scam. By this point, Mr M was desperate to recover the funds that he had already lost and I think that this is why he gave misleading answers at that point. Earlier on in the scam he answered questions from D honestly. So I think he would have done the same with Santander, had it intervened earlier.

Had it then provided Mr M with information about the common features of crypto scams and that B were likely scammers and had an FCA warning, I do not think that Mr M would have carried on with transaction 2. I say this especially as the limited warning provided by D that did not cover the common features of crypto scams at the time did prompt Mr M to question B's legitimacy. So the fact that he was nervous already about B, coupled with a warning from his trusted bank, would have, in my view, likely stopped him from sending transaction 2 and all the subsequent transactions, including the subsequent recovery scam. It therefore follows that, had things gone as they should've, I think Mr M would not have gone ahead with payment 2 or the payments afterwards.

I've considered carefully whether Mr M should hold some responsibility for his loss by way of contributory negligence. In this instance it is unclear what research Mr M did prior to investing. I say this because there was limited information about B available at the time online. Mr M invested a large amount of money, without being able to withdraw a substantial amount. He seemingly carried out little research into B, which meant he did not see the FCA warning. He was promised too good to be true profits. He also, on balance, must have misled the loan companies he got most of the funds from, or they would not have lent him the money. I say this as most companies will not lend for crypto investments. Finally, he carried on sending funds even when he had doubts as to the legitimacy of B, further adding to his losses.

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

I've also thought about whether Santander did enough to attempt to recover the money Mr M lost. Firstly, 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 in a separate case against D, the investigator has recommended that the liability for Mr M's loss be split between Santander Mr M and D. I am not going to specifically comment on the redress on the other case as D and Mr M have agreed with the proposed settlement on that case. But I would like to assure Santander that Mr M is not being refunded the same amount twice and I think that it is fair in this instance that Santander shares liability with Mr M and D.

I also note that transaction 8 was sent directly from Santander to the crypto exchange to the scammer. So D was not involved in that transaction. So for that transaction, the liability should be split equally between Santander and Mr M.

With that in mind I am of the opinion that the below redress is fair.

Putting things right

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

- Refund 33% of transaction 2 to 7
- Refund 50% of transaction 8
- Add 8% simple interest annually on the amount owed, from the date of the respective payments, to the date of settlement, less any tax lawfully deductible.

My final decision

Because of the reasons given above, I uphold this complaint in part and require Santander UK Plc to pay the redress outlined above, to put matters right, in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 September 2024.

Charlie Newton
Ombudsman