

The complaint

Mr and Mrs W complain that Santander UK Plc ('Santander') won't reimburse the money they lost when they fell victim to a scam.

What happened

Mr and Mrs W are represented in this case. As Mr W made the scam payments, I'll mainly refer to him in my decision.

Mr W says that he saw an advertisement about investing with a company I'll refer to as O in this decision in a national newspaper. The investment was celebrity endorsed. Mr W completed an enquiry form and shortly afterwards received a phone call from a representative of O who explained the nature of the investment. Mr W was told he would be allocated an investment manager. Mr W had access to a platform where he could see how his investment was performing. Mr W's representative says that O asked him to provide identification and that he looked at reviews which he now believes to be fake.

An initial investment of £250 was made from another of Mr W's accounts. Mr W was then instructed to open accounts, including a cryptocurrency account, to make further payments. He was advised to use a screen sharing application so that his investment manager could help him to trade.

He made the following payments in branch:

Date	Amount
1/11/19	£4,990
06/12/19	£10,000
12/12/19	£5,000
Total	£19,990

All the payments went to the same account, which was a cryptocurrency exchange.

When Mr W asked to make a withdrawal his account balance on the platform disappeared. When he contacted his account manager Mr W was told he needed to invest more. He refused to do so, and in 2023 brought a complaint to Santander through a representative.

Santander didn't agree to reimburse Mr and Mrs W's loss. It said that the transactions were authorised by Mr W and that the correct level of security was completed.

Mr and Mrs W were unhappy with Santander's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld because he thought that in depth questioning by Santander wouldn't have uncovered the scam. This was for a variety of reasons including the fact the investment opportunity was advertised in a

national newspaper, there was an application process and Mr W received legitimate looking documentation.

Mr and Mrs W didn't agree with the investigator's findings. I've summarised the main points they made below:

- Santander and this service ought to be aware that scammers often groom victims to set up accounts with genuine cryptocurrency providers to facilitate the scam.
- Santander failed to appropriately intervene and provide tailored warnings even though large and out of character transactions were made in branch.
- Mr and Mrs W's representative provided a list of example questions Santander should have asked, including the purpose of the payment; their investment experience; whether they had sought professional advice; whether they had dealt with the company before; how they got the payment details; what paperwork they had received; whether they had access to an online portal and if remote access was used.

The complaint was passed to me to decide. I intended to require Santander to reimburse Mr and Mrs W's full loss plus interest so issued a provisional decision on 9 May 2024. In the "What I've provisionally decided – and why" section of my provisional decision I said:

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

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case.

Aside from the CRM Code, a bank still has wider obligations and a duty to protect its customers, as far as is reasonably possible, against the risk of financial harm from fraud and scams.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr and Mrs W's account is that they are responsible for payments they have authorised.

And, whilst Santander was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good practice at the time, it should fairly and reasonably have been on the look-out for the possibility of APP fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Santander, do and as Santander did in this case.

But, 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've reviewed Mr and Mrs W's account activity in the twelve month period before the scam. Having done so, I consider that the first transaction in November 2019 was unusual and out of character and so Santander ought reasonably to have asked Mr W some questions to satisfy itself he wasn't at risk of harm. I say this because it was a higher value transaction to a cryptocurrency exchange which was unusual given the normal operation of the account. The only previous transactions above £1,000 were regular card payments to a credit card provider.

Santander says that when each transaction was made a scam conversation took place in branch and it knows this because there is an annotation on its notes. But I haven't been provided with any evidence other than the reasons given for each of the payments (investment for £4,990 and £5,000 and transfer to own account for the £10,000 transaction). This means I have no evidence in respect of what Santander staff asked Mr W or what warnings were given. The only other evidence I have is the recollection of a staff member who says Mr W advised he was investing in cryptocurrency and was making good returns. Given that the scam was reported years after the payments were made, I find it hard to attach much weight to these comments.

In the absence of any evidence, I can't fairly conclude that Santander went far enough when the payments were made. I also can't be persuaded that Santander established the first payment was going to an account in Mr W's own name. In any event, I'm not satisfied that even if Santander knew payments were going to Mr W's own account and so appeared to be going somewhere safe and within his control it should have been satisfied that he wasn't at risk of harm. This is because by January 2019, banks had, or ought to have had, a good enough understanding of how these scams work – including that a customer often moves money to an account in their own name before moving it on again to the scammer - to have been able to identify the risk of harm from fraud.

For the avoidance of doubt, I don't consider anything in the Philipp judgement alters this position. This service has issued decisions which explains why.

I've thought about what's most likely to have happened if Santander had intervened as I consider it ought to have done. I'm satisfied that proportionate questions would have led to concern and Mr W wouldn't have gone ahead. Mr W was an inexperienced investor who was sending funds to a cryptocurrency exchange. The investment opportunity was celebrity endorsed which ought to have been a red flag to Santander. In addition to this, the signature section of the contract Mr W signed with O said, "Risk Free Agreement" and went on to say that any losses will be reimbursed, which isn't plausible. O wasn't registered with the Financial Conduct Authority or registered in the UK and Mr W says that remote access was involved. Finally, whilst I don't have full details of the returns Mr W saw on the platform, I'm told that £5,000 rose to £9,000 before he made a further payment.

So, I consider that if Santander had probed enough when the first payment was made it is more likely than not the scam would have been uncovered and all of Mr W and Mrs W's further loss prevented.

Santander may say that Mr and Mrs W should direct their complaint to the cryptocurrency exchange their funds were sent to. But I am required to consider the complaint in front of me and can't direct or instruct Mr and Mrs W to refer a complaint about another business.

I've thought about whether Mr and Mrs W should bear any responsibility for their loss. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all the circumstances of this complaint.

Mr W was an inexperienced investor and wasn't an expert in scams, so I can't hold him to the same standard as Santander. The returns offered were high and guaranteed but I think that the factors I am about to discuss outweigh these points. Mr W says he saw an advert in a national paper which would have been persuasive and he also believed the investment was celebrity endorsed (although he cannot recall which celebrity was involved). Mr W was provided with a contract which was very basic but would seem legitimate to someone who was inexperienced and also received regular contact and emails from his account manager. Mr W also says he had access to a trading platform that allowed him to see how his investment was performing. Given these factors I don't consider Mr W's actions fell well below the standard expected of a reasonable person meaning that he should be reimbursed in full.

I intend to uphold this complaint and require Santander UK Plc to put things right as set out below.

Responses to my provisional decision

Mr and Mrs W accepted my provisional decision and Santander didn't respond.

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.

As neither party has asked me to consider any new evidence or has raised any additional points I see no reason to depart from my provisional decision (which I have reproduced above).

In summary, I consider the scam transactions were unusual and out of character, so Santander ought reasonably to have intervened when they were made. Santander said it did so, but has been unable to provide any evidence of what was discussed, so I'm not persuaded it went far enough. On balance I consider that appropriate intervention would have uncovered the scam so Santander should reimburse Mr and Mrs W in full and pay interest as set out below.

My final decision

For the reasons stated I uphold this complaint and require Santander UK Plc to:

- Refund £19,990; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement. If Santander deducts tax from the interest element of this award, it should provide Mr and Mrs W with an appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 16 July 2024.

Jay Hadfield
Ombudsman