

The complaint

Mr Q complains that Santander UK Plc won't refund the money he lost when he was the victim of a scam.

What happened

Mr Q was the victim of a cryptocurrency investment scam after being contacted on a mobile messaging service app. He believed he was chatting with someone who knew other friends of his, and this person told him about how she had made money on cryptocurrency investment and encouraged him to get involved. Unfortunately, and unknown to Mr Q at the time, this was not a legitimate opportunity, he was dealing with a scammer.

As part of the scam, Mr Q made payments totalling £4,450 to the scammer over the course of three days, as set out below.

Date	Time	Payment	Amount
17/06/2023	-	Card payment to crypto	£100
18/06/2023	11:51	Card payment to crypto	£500
18/06/2023	12:30	Card payment to crypto	£100
19/06/2023	22:38	Card payment to crypto	£1,000
19/06/2023	22:41	Card payment to crypto	£1,000
20/06/2023	01:30	Faster payment to third party	£1,850

When Mr Q was unable to withdraw his profits – despite paying fees he was told were due – and was asked for further payments, he became suspicious and realised he had been the victim of a scam.

Mr Q raised a complaint with Santander. Santander refunded 50% of the final payment to the scam, as it did not consider it had met its obligations to Mr Q regarding this payment under the Contingent Reimbursement Model Code (the Code), but also did not consider that Mr Q had done enough to protect himself from the scam. Santander declined to refund any of the other payments as they were not covered by the Code, and it therefore did not consider it had any liability for Mr Q's loss regarding those payments. Santander also paid Mr Q £100 to recognise that it had provided him with some poor service regarding his complaint. Mr Q was unhappy with Santander's response regarding the outcome of his scam claim, so he referred his complaint to our service.

Ultimately, our investigator upheld the complaint in part. Overall, they felt that Santander had acted fairly regarding the payment affected by the CRM Code. They also felt that, given the pattern of payments, Santander ought to have provided Mr Q with a relevant warning at the time of the last card payment to the scam. The investigator thought that, had that happened, the scam would likely have been uncovered. They did, however, think that there were red flags that should have suggested to Mr Q that all was not as it seemed. Therefore, the investigator said that Santander should refund the money Mr Q had lost from this card payment, less a deduction of 50% in recognition of Mr Q's own contributory negligence.

Mr Q accepted these findings, but Santander did not, it maintains that as the card payments were to a cryptocurrency account in Mr Q's name it should not be held liable for that loss. So, as no agreement could be reached, the matter has been passed to me for review.

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've first considered whether the CRM code applies to all the payments Mr Q made as a result of this scam.

The Lending Standards Board Contingent Reimbursement Model (the CRM code) is a voluntary code which sets out a number of circumstances in which firms are required to reimburse customers who have been the victims of certain types of scam. Santander is a signatory to the Code. However, the Code does not apply to card payments, so only the final scam payment – for £1,850 – is covered by the Code in this case.

The payment covered by the Code

The Code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr Q fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Santander has said, in this case, that it feels it should have provided Mr Q with an effective warning at the time of the final payment, but did not do so. So, given that it accepts that it failed in its obligations to him, Santander has offered Mr Q a refund of 50% of this payment.

Santander has not reimbursed this payment in full because it does not consider that Mr Q did enough to ensure that the person he was dealing with was legitimate before making the payments that are part of this scam.

Having thought carefully, I agree. I appreciate that there were sophisticated elements to this scam, where Mr Q was manipulated through social media before making the payments, and that he was able to see what appeared to be his profits on a trading platform. But there were also a number of things about what was happening and what he was told that I think should have caused him significant concern, including:

- that he was contacted out of the blue on a messaging app by someone he did not know, and that he apparently did no independent research into the investment opportunity they told him about;
- that the returns on his supposed investment were very high, I think they could reasonably have been considered as too good to be true;

With this in mind, I don't think Mr Q had a reasonable basis for belief when making the payment affected by the Code, and so I think it is fair that Santander only refund 50% of Mr Q's loss from this payment.

The payments not covered by the Code

As I explained above, the card payments Mr Q made aren't covered by the Code. So, the starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr Q's account is that he is responsible for these payments that he

authorised himself. And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

But I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good practice at the time, Santander should nonetheless have *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.

So, 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 preventing fraud and scams.

Taking the above into consideration, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr Q, or whether it should have done more than it did.

And I agree with our Investigator that by the time of the final card payment made to the scam, there was enough going on that Santander should have identified that Mr Q could be at risk of financial harm and so taken steps to provide him with a warning relevant to characteristics of the payment he was making. I say this because, by this time, a pattern had emerged of increasing payments, over a relatively short period of time, to a payee associated with cryptocurrency. And given what Santander would have known about scams involving cryptocurrency, I think this pattern should have flagged to Santander that something untoward could be going on.

So given the destination of the payment, I consider it would have been reasonable for Santander to explain some of the common features or cryptocurrency scams. And, had it done so I think such a warning would have resonated with Mr Q given that the scam he was falling victim to bore many of the hallmarks commonly seen in cryptocurrency scams. It's likely such a warning would have prompted Mr Q to look further into the scheme he was supposedly investing in. And I'm aware that there was information online at the time Mr Q made these payments that would have indicated he could be falling victim to a scam. With this in mind, I consider it likely that the spell of the scam would have been broken and that Mr Q wouldn't have proceeded with this payment. I therefore think Santander could have prevented the losses Mr Q incurred from the final card payment. I acknowledge that the cryptocurrency exchange did provide Mr Q with a warning about the payments he was making, but while there were aspects of that warning that did apply to Mr Q's circumstances, I don't think it provided enough context around how those issues applied to an investment scam. So, I don't think the fact that Mr Q moved past that warning means that he would not have paid attention to a detailed investment scam warning from Revolut.

I've taken account of Santander's comments that Mr Q's loss was from his cryptocurrency account, and that it therefore feels the cryptocurrency exchange should be liable for that loss. But my role here is to consider the complaint in front of me. And, in doing so, I have found that Santander did not act fairly and reasonably in the circumstances of this case. And whilst it is possible that Mr Q may have cause to complain about the cryptocurrency exchange's role here, I am not persuaded it would be fair to reduce the award in this complaint solely for that reason. Mr Q is entitled to complain only about Santander, and I am satisfied that Santander could have prevented some of the losses he suffered if it had acted fairly and reasonably.

In reaching my conclusions about what is fair and reasonable in this case, I have also considered whether Mr Q should bear some responsibility for his loss. And, while there were some sophisticated aspects to this scam, I do think it would be reasonable to hold him partially responsible for his loss here. I say this because there were features of this scam – such as how Mr Q was initially contacted, and the supposed profits he was told about – which I think should have caused Mr Q concern and led him to looking into the purported investment in more detail. With this in mind, I consider it reasonable for Mr Q to bear joint responsibility for his loss.

So, in summary, I consider when Mr Q made the final card payment, Santander could have done more to protect him from the risk of financial harm. Had Santander provided Mr Q with a relevant warning regarding that payment, I'm persuaded it is more likely than not the scam would have come to light, and Mr Q wouldn't have completed that payment. But I consider that Mr Q should also share some responsibility for his loss here.

Putting things right

To resolve this complaint Santander UK Plc should:

- Refund 50% of the final card payment Mr Q made to the scam;
- Pay 8% simple interest on this refund, from the date of the payment until the date of settlement.

My final decision

I uphold this complaint in part. Santander UK Plc should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 6 March 2025.

Sophie Mitchell
Ombudsman