

The complaint

Mr J is unhappy that Santander Ltd haven't refunded money he lost as a result of a scam.

Mr J is being represented by a claims management company but for ease of reference I'll only refer to Mr J here.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In December 2023 Mr J said he was looking for work online and had submitted his details to recruitment agencies. He said he was then contacted over the phone by someone working for a recruiter and offering remote work. Mr J was told he could review movies to make a cinema package look more popular. He was then told how the role was task based and explained how it worked - depositing funds via a crypto exchange to complete the tasks and earn commission. In total Mr J sent the following payments to an account he held with an Electronic Money Institution – I'll refer to here as E – and a genuine crypto exchange;

	Date	Payment type	Amount
1	30 December 2023	Debit Card to E	£50.21
2	1 January 2024	Faster Payment to E	£710
3	1 January 2024	Faster Payment to E	£1,500
4	1 January 2024	Faster Payment to E	£5,000
	1 January 2024	Credit from E	£3,504
5	1 January 2024	Debit Card to E	£200.84
6	4 January 2024	Debit Card to Crypto Exchange	£1,050
7	4 January 2024	Credit Card to Crypto Exchange	£3,300
8	4 January 2024	Credit Card to Crypto Exchange	£2,400
9	4 January 2024	Credit Card to Crypto Exchange	£2,000
		Total Payments	£16,211.05
		Total Credits	£3,504
		Total Loss	£12,707.05

After being told to send further funds to earn tasks with a higher commission, but not actually receiving anything in return, Mr J became suspicious and realised he had been scammed. He contacted Santander to make a claim. But Santander said it didn't do anything wrong here so it wouldn't be offering Mr J a refund. Unhappy with that response Mr J contacted the Financial Ombudsman Service.

Our investigator said the complaint should be upheld in part from payments six to nine. He said Santander didn't provide a reasonable intervention and if it had done more the scam would've been uncovered. Our investigator added that Santander could reasonably reduce Mr J's award by 50% here.

Mr J agreed with the investigator.

Santander disagreed and asked for an Ombudsman's review. It said that it did stop some of the payments and spoke to Mr J. On one of the calls, Mr J said that he was sending money to the crypto exchange to purchase crypto and what a customer then decides to do with that money on that exchange isn't for Santander to question or be held liable for because it was a me-to-me payment.

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 investigator that this complaint should be upheld in part and for largely the same reasons.

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.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

It is common ground that Mr J authorised the scam payments of around £16,211. I accept that these were authorised payments even though Mr J was the victim of a scam. So, although it wasn't his intention to pay money to the scammers, under the Payment Services Regulations 2017 (PSRs) and the terms of his account, Mr J is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for Santander to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

Santander's first obligation is to follow the instructions that Mr J provides. But if those instructions are sufficiently unusual or uncharacteristic for the account, I'd expect Santander to intervene and to ask their customer more about the intended transaction before processing it. I'd also expect Santander to provide suitable warnings about common scams to help their customers make an informed decision as to whether to continue with the payment. There might also be cases where it's appropriate for Santander to refuse to follow the instruction if there are good grounds to believe it is being made because of fraud or a scam.

I'm not satisfied that the payments to E here should've reasonably triggered as Mr J had sent higher value payments within the previous twelve months such as £10,100 in February 2023 and £6,563.08 and £4,350 in June 2023. So, I don't think Santander treated Mr J unreasonably by failing to stop the payments to E here.

On 1 January 2024 Mr J's account received a credit from E for £3,504. And Mr J called and tried to speak to the fraud team on the same day, but it was closed due to it being a public holiday. Mr J then spoke to the fraud team the next day and said he wanted to make a payment to a crypto exchange. However, from listening to the call, Santander failed to ask any probing questions about the reason for the payment. Instead, it provided a generic warning about safe accounts. I think this was a missed opportunity to ask Mr J some

questions about the payment reason. And if Santander had, I think the scam would've been uncovered. I'll explain why.

I note Santander did stop the payments Mr J was making on 04 January 2024 and did have conversations with him. But I've not heard any simple probing questions such as "can you explain the reason why you're making the payment today?" and "Why are you purchasing crypto? Is the money being sent to a third-party?" I think if those simple questions had been asked the conversation would've taken a different turn and ended up with a different outcome. Instead, Santander provided some crypto investment scam warnings which wasn't the scam Mr J was involved with at the time. So, despite the generic warning mentioning third parties involved in sending money to a crypto exchange, I don't think this warning was relevant or detailed enough for Mr J to reasonably pause and think about what he was doing at the time. Instead, further questions should've been asked which I think - more than likely - would've revealed the scam.

That's because Mr J thought he was making genuine payments for a job and although he didn't say that this payment was in relation to a job, he also wasn't asked any clear and probing questions about the reason for the payment. Instead, he was given a crypto investment scam warning which wasn't relevant to the reason he was making the payment. So, if Santander had asked probing questions and then provided some more warnings about job scams and the various scams that it was seeing at the time, involving the movement of crypto to third parties for a job opportunity and that Mr J wouldn't be able to withdraw any money, I'm satisfied he would've taken notice of that.

And I've not seen any persuasive evidence that Mr J was told to lie about the reasons for the payment here. Nor do I think he had been told to ignore any specific job scam related warnings that Santander might provide. So, if Santander had asked some probing questions about the payment, I think he would've been honest that he was moving money to a crypto exchange to then subsequently send this to a merchant in relation to a job opportunity. I think given the prevalence of job scams involving the purchase of crypto at the time of the payments, this would've been a red flag to Santander. And it would've been able to provide a warning along the lines of making payments to gain employment, being paid for reviews and promoting products without being able to withdraw funds – which more than likely would've confirmed to Mr J that this was very likely a scam. Which I'm satisfied he would've more than likely listened to.

Should Mr J bear any responsibility for their losses?

In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the investigator that Mr J and Santander should share liability here and for similar reasons. Mr J has accepted the investigator's opinion, so I won't go into a great amount of detail here other than to say I think Mr J could've reasonably completed further research into this opportunity. He wasn't provided with any documentation about the job opportunity (contract and terms of employment) and by the time he was sending the money to the crypto exchange he had already sent a considerable amount of funds to the merchant without earning any commission. And I note on 1 January 2024 he was advised to increase his contributions to receive a great level of commission despite not receiving anything back.

As a result, I think Santander can reasonably reduce Mr J's award by 50% here.

Could Santander have done anything else to recover Mr J's money?

I've thought about whether Santander did enough to attempt to recover the money Mr J lost, as there are some instances where debit and credit card transactions can be refunded through making a chargeback and S.75 claim.

A chargeback wouldn't have been successful for the debit card payments to the account in Mr J name at the genuine crypto exchanges, as Mr J was able to move the money onto the scammers. So, Mr J duly received the service he paid for on his credit and debit card. The money was subsequently lost from his other account when it was moved by the scammers. So, he couldn't claim that he didn't receive the goods or services paid for from his Santander account to the crypto exchange.

As a result, I don't think Santander have acted unreasonably by failing to pursue a chargeback or S.75 claim or try and recover Mr J's money here.

And the transfers Mr J made to E here were subsequently sent to the scammers from E – so it wouldn't have been possible for Santander to recover that money on Mr J's behalf.

My final decision

For the reasons given above, I uphold this complaint in part and direct Santander Ltd to pay Mr J:

- £8,750 minus 50% and
- Add 8% simple interest per year on that amount from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 April 2025.

Mark Dobson
Ombudsman