

The complaint

Mr M complains about Santander UK plc.

He says that Santander didn't do enough to protect him when he became the victim of a scam and would like it to refund him the money he has lost.

What happened

Mr M received an unsolicited message from an individual offering a task-based employment opportunity. Mr M would be required to purchase tasks via cryptocurrency and would then be paid commission.

Mr M agreed to take up the opportunity and made the following payments.

Payment	Date	Payee	Payment type	Amount
1	12/06/2023	A (crypto)	Card	£15.71
2	14/06/2023	A (crypto)	Card	£47.96
3	14/06/2023	A (crypto)	Card	£4.15
4	14/06/2023	A (crypto)	Card	£4.15
5	14/06/2023	NT (crypto)	Faster payment	£4,900
6	14/06/2023	A (crypto)	Card	£41.50
7	14/06/2023	A (crypto)	Card	£360.21
8	14/06/2023	A (crypto)	Card	£3,070.88
9	14/06/2023	A (crypto)	Card	£1,000.11
10	14/06/2023	A (crypto)	Card	£8.30
11	14/05/2023	Z	Credit	£3,000
12	15/06/2023	A (crypto)	Card	£2,361.26

Unfortunately, Mr M had fallen victim to a scam which he realised when he was told he needed to pay excessive amounts of tax in order to access the money he thought he had made.

He made a complaint to Santander, but it didn't uphold his complaint. Unhappy, he brought his complaint to this Service.

Our investigator looked into things but didn't think that Mr M's complaint should be upheld. They said that as Mr M had made similar sized payments previously, that Santander would not have seen the payments he made as unusual, and so didn't need to intervene in the payments.

As Mr M didn't agree, the complaint was passed to me to make a final decision. I have previously written to Mr M and Santander explaining that I didn't agree that the payments weren't unusual, but that even if Santander did intervene, I don't think this would have stopped the payments Mr M made.

Mr M explained that he still wished to receive a final decision on his complaint.

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've decided not to uphold this complaint, for broadly the same reasons as our Investigator. I know this will be disappointing for Mr M, so I'll explain why.

In broad terms, the starting position at law is that banks and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

Mr M authorised the payments in question here – so even though he was tricked into doing so and didn't intend for the money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Santander should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having 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, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr M when he authorised payments from his account or whether it could and should have done more before processing them.

Looking at the payments Mr M made, I think that Santander should have had concerns about the payments he was making from payment five – this was a significant payment which was going to a known crypto exchange which Santander would have known carried an elevated risk. With this in mind, I think that Santander should have got in touch with Mr M to ask about what he was doing and why, to try and protect him from financial harm and uncover a potential scam.

However, in order for me to uphold this complaint, I would also have to think that such an intervention would have made a difference, and prevented Mr M from making the payment, and I'm afraid I don't think that it would.

I say this because at around the same time Mr M made this payment from his account with Santander, Mr M was also making payments to the same scam from his account with M – and M did intervene with what he was doing and spoke with him about it.

M has provided the call that took place to this Service which I have listened to. During this call, Mr M was asked about the purpose of the payment, if he had received any calls or messages about the investment, and if there was any third party involved in what he was doing.

Mr M explained that he had invested in crypto before, and that no one had contacted him about making the payments. He also explained that he had been scammed before and was knowledgeable about how to invest in crypto. When asked about what would happen to the funds once they left his account, he said the money was to be paid into his own crypto wallet – and that he didn't intend on moving the money anywhere else. But this wasn't the case.

I don't know why Mr M didn't divulge that he had been contacted via message about the crypto, and that he was actually making the payments as part of a supposed employment opportunity. He says that he wasn't coached by the scammer in what to say – but it is clear that he didn't divulge important information to M, which could have helped it uncover the scam. Had he told M that he was paying money as part of an employment opportunity, then I think it would have known that he was being scammed and warned him about this. Instead, he presented himself as knowledgeable about crypto investments, and the risks involved.

So, with this in mind, even if Santander had contacted him about what he was doing and why, I think it's likely that Mr M would have told Santander the same as he told M – and it wouldn't have been able to discover the truth of what was actually happening and prevent the scam.

I am very sorry for the situation Mr M now finds himself in, I know that he has lost a lot of money and is understandably upset by what has happened – but the loss he has suffered has been caused by the scammer – not Santander – and while I do think it missed an opportunity to intervene, I don't think that this made a difference to the loss Mr M has suffered.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 October 2024.

Claire Pugh
Ombudsman