

The complaint

Mr B has complained that Santander UK Plc won't refund the money he lost after falling victim to a scam.

What happened

In spring 2021, Mr B found some cryptocurrency brokerages online which he thought looked legitimate, and expressed an interest. They then contacted him by a messaging app, and promised returns of up to 2000%/month if they made trades on his behalf. However, these were scammers.

The scammers persuaded Mr B to invest by sending money from his Santander account to his crypto account, then on to the scammers' wallets. They asked for further payments for commission, taxes, withdrawal fees, and so on. Mr B sent around £33,000 in total.

In 2023, Mr B complained to Santander. Santander didn't think it was liable for Mr B's loss.

Our Investigator looked into things independently and didn't uphold the complaint. Mr B didn't agree, so the complaint's been passed to me to decide.

I sent Santander and Mr B a provisional decision on 2 July 2024, to explain why I thought the complaint should be partly upheld. In that decision, I said:

There's no dispute that Mr B authorised the payments involved, even if he didn't intend for the money to go to scammers. So under the Payment Services Regulations and the terms of his account, Mr B is liable for the loss in the first instance. But the matter doesn't end there.

Taking into account the law, regulator's rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, I consider that Santander should have fairly and reasonably:

- *Monitored accounts and payments to counter risks such as fraud and scams;*
- *Had systems in place to look out for particularly unusual transactions or other signs its customers were at risk of fraud;*
- *In some circumstances, taken further steps or made further checks before a payment went out, or even blocked it, to help protect customers – irrespective of the type of payment involved.*

I've reviewed Mr B's account activity in the months leading up to the scam, and found very little comparable activity. His payments to the scammers were broadly out of character with his normal account usage. I find that Santander should have intervened from at least the point of the £5,200 payment on 10 May 2021. That was a large payment in and of itself, and combined with the other payments Mr B had made in the short time beforehand, it meant that he'd paid a concerning amount over multiple payments in a relatively short space of time. These went to a new payee, which was a crypto site. And by 2021, the Financial Conduct Authority (FCA) and Action Fraud had published warnings about cryptocurrency scams, so Santander should've had a good understanding of the risk of these scams and how they work. So from the point of the £5,200 payment, I think Santander should have been prompted to intervene.

Had Santander intervened at that point and asked reasonable questions, it seems most likely that it could have uncovered the scam and stopped any further loss. Reasonable questioning would've likely revealed things like how Mr B was receiving excessive contact on a messaging app from unregulated crypto firms, offering completely unrealistic returns, with no proper documentation or due diligence, and they were demanding excessive upfront fees – especially before allowing withdrawals.

I've seen nothing to suggest that Mr B would not have been honest about why he was spending this money – he thought he was genuinely investing, and he hadn't been told to lie if questioned. I'm also conscious that this is a relatively prominent type of scam, so I think Santander would have been able to quickly identify what was happening and prevent it. And I've found no reason why Mr B would not have listened to Santander – it is a well-known name in banking and he's accepted he was not an experienced investor.

So I currently think that Santander bears some liability for Mr B's loss from the £5,200 payment onwards.

I've also thought carefully about Mr B's role in what happened. I understand that the scammers built a rapport with him, that the websites looked professional, and that he was not an experienced investor. However, he ought to have more concerns along the way about what he was being told and asked to do. Mr B did not get any proper documentation, he doesn't seem to have carried out reasonable due diligence, the returns he was offered were not plausible, and it looks like even after he became reasonably aware this was a scam he still continued to pay money in. He did little to mitigate his losses, and I can't see that he had a reasonable basis on which to believe that this was all legitimate.

So I don't think I can fairly hold Santander solely responsible for Mr B's loss from the £5,200 payments onwards. I currently think Mr B should also bear some responsibility for that loss.

I've also considered what Santander did to try to recover the funds. But as they went from Santander to a cryptocurrency account of Mr B's in his control, and as he then sent all the funds on and emptied the crypto account, there was nothing more that Santander could reasonably do to get his money back. And the payments were not covered by the CRM code, having gone to Mr B's own account and then on to the scammers in crypto.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 30 July 2024. Mr B accepted the provisional decision. Santander sent in some further arguments, which I'll talk about below.

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.

While I have read and taken into account all of Santander's latest submission, I'm tasked with deciding cases quickly, in plain English, and with minimal formality. So I'll focus on the key points rather than going through it on a point-by-point basis. And given the rate of grammar errors, I will paraphrase Santander's points rather than quoting the bank directly.

Santander's main contention surrounded the fact that our Investigator had previously not upheld the case. But as Santander knows, we have a two stage process, where after the Investigator gives their opinion, either side or both sides can ask for an Ombudsman's decision. Ombudsmen are not here to simply rubber stamp what the Investigator said – instead, we look at things afresh and give our own findings. Here, I have disagreed with the Investigator's opinion, which is always a possibility when the case goes to an Ombudsman. And as an Ombudsman, my decision overrules the Investigator's view.

Turning to the individual points, Santander noted that our Investigator thought Mr B had probably not been truthful with some lenders, which allowed him to get loans to help fund the payments; and he could've mitigated his loss by being honest with the lenders, thereby failing to get said loans. However, that was supposition – our Investigator had no evidence which substantiated what details were given for the loans, nor what any lenders would've thought or done. And even then, I've already taken account of Mr B's failure to mitigate his losses, which is why I'm holding him partly liable for the loss. Further, as I found before, Mr B had no reason not to be honest with Santander had it intervened – he thought he was genuinely investing, and he hadn't been told to lie if questioned. He selected appropriate reasons when asked for the purpose of the payments.

Santander noted that our Investigator thought Mr B was determined to recoup his losses, which meant he ignored the warnings he was given. Again, that finding on Mr B's level of determination was suppositional. Further, Santander only gave generic, rather unspecific warnings as part of the payment process, which were not likely to have been effective here regardless. So I don't find them to be particularly relevant in this case.

Santander noted our Investigator thought that because Mr B had admitted to the scammer that he was worried this might be a scam, yet he chose to proceed, it showed he was completely taken in by the scammer. I'm afraid I find that logic to be backwards. If Mr B already had suspicions that this could be a scam, it instead tends to suggest that he was *not* completely taken in by the scammer. And so intervention by the bank – combined with Mr B's existing suspicions – would likely have been able to break the scammer's spell.

Santander argued that the starting point in law is that banks are expected to process payments which a customer authorises them to make. I am aware of that, but as Santander should well know, the matter does not end there. Taking into account the law, regulator's rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, Santander should have fairly and reasonably:

- been monitoring accounts and payments to counter risks such as scams;
- had systems in place to spot particularly unusual payments or other signs customers were at risk of fraud; and-

- in some cases, taken further steps or made further checks before allowing a payment out, or even blocked payments, to help protect customers – irrespective of the type of payment.

Santander felt that the payments involved were not unusual, as Mr B had previously made payments between his own accounts or to trading platforms. But per the provisional decision, by the point of the £5,200 payment on 10 May 2021, the payments involved should've stood out as being remarkable. That was a notably large payment in and of itself, and combined with the other payments Mr B had made in the short time beforehand, it meant that he'd tried to pay a concerning amount over multiple payments in a relatively short space of time, which was out of character with his normal account usage. And they went to a new payee, which was a crypto site, which Santander was reasonably aware bore a heightened risk of scams.

Santander pointed out that the cryptocurrency exchange was a legitimate exchange. And I don't disagree. But by 2021, the FCA and Action Fraud had published warnings about cryptocurrency scams and the increased risk that comes with payments to crypto sites. Taken together with the remarkable nature of the activity, this should've prompted Santander to intervene by the £5,200 payment noted.

Santander felt that its intervention would've made no difference. I don't agree. Per the provisional decision and what I've said above: I've found no good reason to think that Mr B would not have been honest about why he was sending the money; this was a relatively prominent type of scam which Santander could have identified and prevented; and I've found no reason why Mr B would not have listened to Santander – it is a well-known name in banking, he was already suspicious of the scammers, and he accepted he was not an experienced investor.

Santander questioned what happened to the funds once they went to Mr B's crypto account. Mr B has provided screenshots to show that the funds were sent on to the scammers in crypto, and his crypto account was left with a zero balance.

Santander felt that as the payments went to a crypto account in Mr B's name, it should not be held liable for the loss. But as Santander will know, it should have fairly and reasonably been on the lookout for potentially fraudulent payments, even if the payments were going to another account in the customer's name. Indeed, this is not the only type of prominent scam which involves transfers to one's own account. And identifying and preventing such scam payments would still have the effect of preventing a loss to its customer. So Santander can still be held liable for a loss which resulted from its failure to intervene – which is what I've found to have most likely been the case here.

So having reconsidered the case, I've come to the same conclusions as in my provisional decision.

Putting things right

I direct Santander UK Plc to:

- Refund 50% of each scam payment, from the £5,200 payment onwards;

- Add simple interest at the rate of 8% simple per year onto the refund, payable from the date each partially-refunded payment debited, until the date of the refund.

If Santander considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell Mr B how much tax it's taken off. It should also give Mr B a tax deduction certificate if he asks for one. Mr B may be able to reclaim the tax from HMRC if he doesn't normally pay tax.

My final decision

I uphold Mr B's complaint in part, and direct Santander UK Plc to put things right in the way I set out above.

If Mr B accepts the final decision, Santander UK Plc must carry out the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 September 2024.

Adam Charles
Ombudsman