

The complaint

Mr C complains that Santander UK Plc (Santander) won't refund him the money he lost as a result of an investment scam.

Mr C is represented by a third-party, but for ease of reading, I'll refer to Mr C only.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail, instead I've summarised what I consider to be the key events.

Mr C saw an advert online about an investment opportunity in cryptocurrency. He provided his contact details and was called by the investment company, which provided further explanation about how it worked. Mr C says he was sceptical and decided to invest a small amount to see how it worked.

He invested a small amount, by transfer from an account he held with another bank, and he waited a few weeks to see what happened with the investment. He says it grew a little and he was able to make a £200 withdrawal. He had carried out some research into the investment and couldn't see anything negative about it online.

Eventually, Mr C decided to invest more heavily. He made an initial payment of £22 from his Santander account, which was successful. Mr C then tried to make a payment for £6,000 on 11 October 2022. Both payments were to another account in his name, from which he then intended to make his investment. However, Santander blocked the £6,000 payment and asked Mr C to contact it. Mr C called Santander and during the call Santander asked Mr C questions to establish whether the payment was part of a scam. Santander released the payment and Mr C went on to transfer money to the scammers from his other account.

Mr C says he realised he had been scammed when the investment company contacted him a few days later and told him he had made £50,000 in just one transaction but he would need to invest another £50,000 in order to access his returns.

Mr C complained to Santander that it had failed to exercise reasonable skill and care when dealing with these transactions, but Santander didn't uphold his complaint. It said the Contingent Reimbursement Model (CRM) Code didn't apply, because Mr C was making transactions to another account in his name. It also thought it had taken steps to try and prevent the fraud, by contacting Mr C and providing him with warnings about the risks of cryptocurrency investment.

Our investigator didn't think Mr C's complaint should be upheld. He thought Santander asked some relevant questions, but it hadn't established where Mr C was actually investing. He thought Santander's questions were largely about the account he was transferring money to. But the investigator thought further questioning and warnings by Santander were unlikely to have changed matters. He thought the scammers had built up a relationship of trust with Mr C, Mr C was aware the investment was not FCA regulated, Mr C had carried out research

and had found nothing negative and had been able to make a withdrawal from the investment. He didn't think Santander could have uncovered or prevented the scam.

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.

There's no dispute that Mr C authorised the payments, even though he was tricked into doing so and was the victim of a scam. I appreciate he didn't intend his money to go to scammers. But under the Payment Services Regulations 2017, he is liable for the loss in the first instance. However, the matter doesn't end there.

While the CRM code doesn't apply to payments sent between accounts belonging to the same customer, taking into account the law, regulatory 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, 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.

It's clear Santander did monitor Mr C's account and considered the £6,000 transaction was unusual. While it had made the £22 payment, that was for a small amount and wouldn't have aroused any particular suspicions, but I think the £6,000 payment rightly prompted Santander to intervene.

Santander asked a series of questions of the kind I would expect it to make in such circumstances. It said it looked like the payment was going to another account in Mr C's name, he confirmed this was correct. Santander asked if this transaction was to buy cryptocurrency and Mr C said it was. He confirmed that he opened the account and nobody else had access to it. He said he hadn't been promised high returns or that the risks were low.

Mr C was told that his cryptocurrency investment wasn't FCA regulated and Santander advised him to be very careful investing in non-FCA regulated investments and it used the FCA scam smart tool to see if there were any warnings about the company.

Santander asked how he found out about the investment and he said he found it online. He said he had transferred smaller amounts from another bank to his account but they blocked a transaction and so he wanted to make the transfer from Santander. Santander gave warnings about making the investment.

The problem here was Santander really needed to ask for more details about the final investment Mr C was making, not about the provider of the account to which he was initially

transferring his funds. This was a legitimate financial services platform that enabled Mr C to buy and transfer cryptocurrency.

At one point, Mr C did say the payment he was trying to make was to an 'intermediate' account and his money wasn't going to stay in that account. He indicated the investment would be made from that account.

I consider this ought to have prompted Santander to ask what the final intended destination of the money was. Particularly so considering he had mentioned having a payment blocked by another bank. That said, I consider this wouldn't have made any material difference on this occasion, because it appears there were no warnings against the particular investment company Mr C was trying to invest with, at the time the transaction was made. He also seems to have carried out research and satisfied himself the investment was genuine.

I think any other questions Santander could have asked about the investment wouldn't have uncovered the scam. For example, if it had asked whether Mr C had researched the particular investment he was trying to invest in, rather than whether he had researched the provider of the account he was initially transferring his money to, whether he had been able to make payments previously, whether anyone else had access to his account, whether he had set it up himself, his answers wouldn't have raised concerns.

Santander also warned him about investing in cryptocurrency, mentioning it could be a scam if there was pressure to invest, if promised returns were too good to be true or risks had been downplayed. This warning doesn't appear to have caused Mr C concern, even though some of these features were present, so it seems unlikely a clearer warning would have caused him to act differently.

Overall, I consider that further probing questions from Santander, or a clearer warning, aren't likely to have resulted in the scam being uncovered or in Mr C deciding not to go ahead with the transaction, so I don't think Santander needs to do anything further.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 November 2024.

Greg Barham
Ombudsman