

## The complaint

Mr D is unhappy that Santander UK Plc won't reimburse money he lost to a scam.

The complaint is brought on Mr D's behalf by a professional representative.

## What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In summary, Mr D has explained that between March 2021 and April 2021 he made payments from his Santander account to buy cryptocurrency which he ultimately lost to an investment scam.

Mr D filled in an online enquiry form after seeing an advert promoting a cryptocurrency investment with a company I will refer to as F. Following contact with the scammer he opened an account on its platform. Mr D has told us he was asked to verify his identity by sending F a copy of his passport which made him think that he was dealing with a genuine company. Mr D also explained that he built a rapport with the scammers, and believing it was a legitimate investment he started to invest.

It appears that Mr D made the scam payments to three different sources – a third-party company and two different cryptocurrency exchanges (who I will refer to as B and C). After a few more payments, he tried to make a withdrawal and it was at this point he realised he had been scammed. Mr D reported he had been scammed to Santander. I have included a breakdown of the relevant payments below.

Payment number	Date	Type of Transaction	Amount
1	16 March 2021	Card payment to a third-party company	£190
2	18 March 2021	Card payment to a cryptocurrency account at B	£1,854
3	1 April 2021	Faster payment to Mr D's cryptocurrency account at C	£2
4	1 April 2021	Faster payment to Mr D's cryptocurrency account at C	£4,300
5	12 April 2021	Faster payment to Mr D's cryptocurrency account at C	£5,000
6	21 April 2021	Faster payment to Mr D's cryptocurrency account at C	£720

Mr D raised a complaint with Santander in October 2023. Santander investigated the complaint but didn't uphold it. It didn't think it had done anything wrong by allowing the payments to go through. So, Mr D brought his complaint to our service.

Our investigator looked into the complaint and upheld it in part. In summary, the investigator said he could see that Santander had initially stopped Payment 4, however, in the absence of a call recording, our investigator wasn't satisfied with the effectiveness of the intervention

call. It was our investigator's view that if there had been an effective intervention then the scam could have been prevented from Payment 4. Our investigator also thought Mr D should bear some responsibility for his loss too. The investigator thought that a fair deduction to the amount reimbursed would be 50% from payment 4 onwards.

Santander didn't agree with our investigator's view. In summary, it said liability should lie with the company that transfers money to the scammer. It also said that a warning on F was available on the Financial Conduct Authority (FCA) website and that it would have advised Mr D to check the website. It also felt that Mr D should accept liability as there was adverse information available on F before he invested.

As Santander didn't agree with the investigator's view, the complaint has been passed to me for a decision.

### **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.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides refunds in certain circumstances when a scam takes place. But as Santander has pointed out, these payments aren't covered by the CRM code. This is because it doesn't cover debit card transactions or payments made to an account held in a person's own name. I've therefore considered whether Santander should reimburse Mr D under any of their other obligations.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make. It isn't disputed that Mr D authorised the payments from his Santander account. Therefore, under the Payment Services Regulations 2017 and the terms of his account, Santander is expected to process Mr D's payments and he is presumed liable for the loss in the first instance.

But in some circumstances, it might be appropriate for Santander to take a closer look at the circumstances of the payments – for example, if it ought to be alert to a fraud risk, because the transactions were significantly out of character or suspicious. And if so, it should have intervened, for example, by contacting the customer directly, before releasing the payments. This is to help protect customers from the possibility of financial harm from fraud. But I'd expect any intervention to be proportionate to the circumstances of the payment.

I need to decide whether Santander acted fairly and reasonably in its dealings with Mr D when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

So, the starting point here is whether the payment instructions given by Mr D to Santander were unusual enough to have expected additional checks to be carried out before the payments were processed. When considering this, I've kept in mind that banks process high volumes of transactions each day. And that there is a balance for Santander to find between allowing customers to be able to use their accounts with ease and questioning transactions to confirm they are legitimate.

### **Should Santander have identified that Mr D might be at a heightened risk of fraud?**

I don't think Payments 1, 2 and 3 leaving Mr D's account would have caused Santander any fraud concerns. Payments 1 and 3 were relatively small so were very unlikely to flag as suspicious. Payment 2 was slightly larger but a customer making some larger payments,

compared to their usual spending is not uncommon and having looked at Mr D's account activity I could see he has made some larger payments in the months leading up to the scam. So, overall, I don't think these payments presented an obvious fraud risk.

Santander did intervene when Mr D attempted to make Payment 4. It blocked it pending contact with Mr D. So, I'm persuaded it clearly identified a risk in relation to that payment. I don't, therefore, need to consider whether Santander ought to have found that payment to be sufficiently concerning that it needed to speak to Mr D before allowing the payment to go ahead.

From what I've seen Santander did speak to Mr D before allowing this payment to be processed, but unfortunately that call is no longer available and there are no notes to show that a robust conversation took place. So, I can't know for sure what was discussed. But this lack of evidence isn't enough for me to say that Santander should refund Mr D the money he lost, I need to be persuaded that sufficient intervention would have made a difference and would have prevented the payments from being made.

*If Santander had made further enquiries before processing Payment 4, would that have prevented the losses Mr D incurred?*

I can't know for sure what was discussed nor what would have happened if Santander had intervened more than it did. But I am satisfied from the information that Santander has supplied that there was an interaction between Mr D and Santander for Payment 4, and that Santander therefore had an opportunity to identify whether Mr D was falling victim to a scam and prevent it.

Santander has advised it would have asked Mr D to check the FCA website before investing and that he would have seen a warning on there about F. However, it's not possible to know if this was discussed or what level of detail Santander would have gone into. Mr D also can't remember the details of the conversation he had. Where the evidence is incomplete, inconclusive, or contradictory, I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in light of the available evidence and the wider surrounding circumstances. On balance, I'm not satisfied that Santander went far enough in the call based on the lack of information available and given the fact that Mr D doesn't remember the detail of the call.

If Santander had questioned Mr D further about the payments, I've no reason to doubt that he would have spoken freely about the purpose of the payments. He hasn't told us he was being coached by the scammer to provide a cover story which can sometimes, but not always, be the case with these types of scams.

I've thought carefully about whether the kind of questions that I believe ought to have been asked by Santander would have made a difference. And on the balance of probabilities, I think they would have. If Santander had asked questions surrounding the context of the payments Mr D was making, I think it's likely he would have explained what he was doing, i.e. that he was sending money to a newly opened account with F as part of a cryptocurrency investment.

I wouldn't expect Santander to have just accepted the reason for the payment at face value before releasing the funds. By April 2021 when Mr D made Payment 4, cryptocurrency scams had continued to increase in frequency. And firms, including Santander, ought to have been aware of this risk to their customers – including situations whereby payments were going to the customer's own cryptocurrency account before moving it on again to the scammer. It could have enquired as to how Mr D had found the investment opportunity and whether anyone else was involved. As Santander knew the payment was going to a

cryptocurrency provider, I would also have expected it to have provided a warning that was specifically about the risks of cryptocurrency investment scams and the main characteristics of these scams.

Had Santander asked the questions I believe it ought fairly and reasonably to have asked, it could have discovered that Mr D had found the investment opportunity online, that a broker was advising him on each payment and helping him remove money from his cryptocurrency wallet. Alongside this it could have established that the returns promised were too good to be true. These were all common hallmarks of cryptocurrency investment scams and ought reasonably to have alerted Santander that he was most likely being scammed. So, I think it missed an opportunity to uncover the scam and prevent any further losses.

I wouldn't expect a bank to interrogate its customer about unusual payments but as explained above, Mr D has confirmed he wasn't being coached by the scammer so, it's likely that had Santander questioned him in the level of detail I would have expected during its call on Payment 4, then it would have identified this was likely a scam and that Mr D shouldn't proceed with the payments without doing further checks to see if the investment was genuine. I believe such a warning would have resonated with Mr D. He has told us he was new to cryptocurrency investments – so I think he would have followed any advice he was given. And I think a warning would have very likely caused him to have sufficient doubt to not go ahead with any further payments.

So, in those circumstances I am satisfied it is fair to hold Santander responsible for some of Mr D's loss.

*Should Santander be partially responsible for Mr D's loss when the payments went to an account in his name?*

In reaching my decision about what is fair and reasonable, I have taken into account that Mr D transferred the money to an account in his own name, rather than directly to the scammer, so he remained in control of his money after he made the payments from his Santander account, and it took further steps before the money was lost to the scammers.

Santander suggests liability should lie with C. But I must consider the complaint that has been referred to me (not those which haven't been or couldn't be referred to me). And for the reasons I have set out above, I am satisfied that it would be fair to hold Santander responsible for Mr D's losses (subject to any deductions that I'll comment on below). As I have explained above, Santander ought to have been on the look-out for payments presenting an additional scam risk. By the time Payment 4 was made it would have been aware of the risk of crypto currency scams and so it shouldn't have concluded there was no risk to Mr D just because the payments were going to a cryptocurrency account in his name. With this in mind, I'm satisfied Santander should fairly and reasonably have made further enquiries after it blocked Payment 4 and, if it had, it is more likely than not that the scam would have been exposed and Mr D would not have lost the money from this payment or from the subsequent payments. I am required to consider the complaint in front of me and here Santander could have prevented the loss so, I'm satisfied it is fair to hold it responsible, at least in part, for Mr D's loss.

*Should Mr D bear any responsibility for his loss?*

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.

I recognise that, as a layperson, there were aspects to the scam that would have appeared convincing. Mr D was impressed by the website and described the scammers as

professional. I've also taken into account the provision of the trading platform (which, I understand, would have used genuine, albeit manipulated, software to demonstrate the apparent success of trades). Mr D has advised the scammer used the apparent success of his early trades to encourage increasingly large deposits and that they built a rapport with him during phone calls. So, I've taken all of that into account when deciding whether it would be fair for the reimbursement due to Mr D to be reduced. I think it should be.

Mr D explained he had carried out checks online before investing in F and that the majority of reviews on a well-known review site were positive. Having carried out my own historical internet search, I have found a significant number of negative reviews on the same review website Mr D has used. These reviews highlighted the company was fraudulent. I would have expected these reviews to put him on notice that something might not have been right, and he should have made further enquiries into F, certainly before making the larger payments beginning with Payment 4. The profits described by the scammer in his chats with Mr D should have also highlighted the returns were too good to be true and raised concerns about the legitimacy of the investment.

Mr D's representative has raised some concerns that Mr D was vulnerable at the time of the scam due to a motor accident he had been involved in. The accident happened in September 2020, six months before he started to invest with F and although I can understand that this must have been a very difficult time for Mr D, I don't think it would be fair to hold Santander liable in addition to what I have described above.

Taking all of the above into account I think that Santander can fairly reduce the amount it pays to Mr D because of his role in what happened. Weighing the fault that I've found on both sides, I think a fair deduction is 50%.

Mr D's representative has also requested compensation in addition to a refund of the scam payments made. But I can't see any reason which would suggest compensation is warranted in the circumstances of the complaint as I have not found anything to suggest Santander have acted incorrectly.

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

There are industry standards around attempting recovery of funds where a scam is reported.

Most of the scam payments were sent from Santander to a cryptocurrency account in Mr D's name, from where he then would have moved the funds onto the scammers. So, I don't think there was any realistic prospect of Santander recovering the funds. With payments sent by debit card it's possible to dispute the payments through a process called chargeback, which can sometimes be attempted if something has gone wrong with a debit card purchase. But I can see that Mr D didn't dispute the transactions in time to raise a chargeback claim in line with the relevant timescales, and I don't think there was any real prospect of a chargeback succeeding.

#### Interest

Mr D has been deprived of the use of his funds on Payment 4, 5 and 6. So, Santander should pay 8% simple interest yearly to the 50% refund on those transactions (calculated from the date of the transactions until the date of settlement). He may have used these funds in a variety of different ways if they had remained available to him. I think 8% simple is a fair interest rate in these circumstances.

### **My final decision**

For the reasons given above, I uphold in part this complaint and require Santander UK Plc to pay Mr D:

- 50% of payments 4, 5 and 6 – a total of £5,010
- 8% simple interest per year on that amount from the date of each payment to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 April 2025.

Aleya Khanom  
**Ombudsman**