

The complaint

Mr K is unhappy that Santander UK Plc (Santander) won't refund payments he made because of a cryptocurrency based, investment scam.

What happened

In 2023, Mr K was a victim of a cryptocurrency based, investment scam which involved 5 payments over around 2 weeks to a cryptocurrency exchange account in his name from his Santander account.

In summary, Mr K was referred to an investment opportunity by a friend of his. Mr K said his friend showed him Trustpilot reviews, and with only one negative one he decided to take his friend's recommendation. He filled in a questionnaire on a website, and the scammers arranged for him to have an account set up. Mr K invested an initial sum through a third-party bank, and then made payments from his Santander account, between 3 and 16 May 2023, totalling £18,433. Mr K's friend went to withdraw money and was asked by the scammers to pay more to release the funds. It was at this point that Mr K and his friend realised they had been scammed.

Mr K complained to the third-party bank about the initial payment, and this has been the subject of a different complaint with our service. I am aware that it has been resolved, but I have read the circumstances around that complaint as it is linked to this one. To be clear though, I am deciding Mr K's complaint about Santander and the 5 payments he made from his account he held with it.

Mr K reported what happened to Santander and at the same time, raised a complaint it failed to protect him from the scam. Santander replied that Mr K had transferred money to his own cryptocurrency account and so, he should raise the loss with them. It said it completed checks, but Mr K wasn't honest with the answers he provided, so it was unable to assist him.

Unhappy, Mr K brought his concerns to our service to investigate.

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 reached the same outcome as our investigator for these reasons:

- The starting position in law is that Mr K is responsible for the payments he made. And Santander has a duty to make the payments he tells it to.
- Santander signed up to a voluntary code called the Contingent Reimbursement Model, aimed at refunding victims of fraud and scams. That said payments made by debit card, like the ones made by Mr K here, are not included.
- But, as supported by the terms of the account, that doesn't preclude Santander from

making fraud checks before making a payment. And, considering regulatory expectations and good industry practice, I'm satisfied that it should fairly and reasonably do this in some circumstances.

Should Santander have done more when it recognised that Mr K was at risk of financial harm from fraud?

- I'm satisfied by 3 May 2023, when the first of these payments were made by Mr K that Santander would have had a good understanding of how cryptocurrency scams work, following warnings published by the Financial Conduct Authority and Action Fraud. And that Santander ought to have been on the lookout for payments such as these occurring.
- I think Santander ought to have been concerned with the disputed card payments Mr K was making to a cryptocurrency exchange account he held. And it was, as it contacted him on 3 May 2023, when he made his first payment of £1,700.
- I have listened to both calls that occurred between Mr K and Santander on 3 May 2023 and have been able to hear what was said between them. The calls were carried out at pace by both parties and at times it was difficult to hear what was said between them as both Mr K and the representative from Santander went at pace with what they were trying to do: Mr K was trying to get his payment authorised and the representative was trying to get what came across to me like a scripted series of statements read out to him, so that he could proceed with what Mr K wanted.
- After the representative had read out a series of statements, including checking with Mr K whether he had been coerced by criminals, enticed by high returns, shown fake returns or whether he was sending money to an unregulated company, he asked Mr K whether he was satisfied as to the legitimacy of the company, to which Mr K replied "yes".
- The conversation then briefly took a diversion about when Mr K was going to reattempt payment, and he mentioned that they were going to schedule another attempt later. I think this ought to have raised a red flag with Santander that deserved more open and probing questions about why he said that. But in any case, I think it ought to have done more of that in general as well as provide context to the questions it asked.
- After listening to the calls on 3 May 2023, I don't think I can say Santander did enough with the questions it asked, and instead its representative asked short, closed questions and then moved on. I think it ought to have done more here to ask about what the payments were for. For example, it could have asked whether the money would remain in the recipient account or be moved on. It could have also asked who else was making a payment later in the day with him and why.
- Based on what I have just concluded, I am persuaded Santander ought to have seen Mr K was at risk of financial harm from the first payment when it contacted him, and it should have done more at this point, it should have asked more open and probing questions based on the answers it was given back.
- I have also listened to a call from 16 May 2023, this being between the parties when Mr K was attempting to make his fifth and final payment. After carefully listening to what was said between them, a similar story happened here. The representative from Santander seemed to read off a script but, on this occasion, he made two

statements about opening an online investment account with a broker, that may have access to his account and about promised returns. The representative then asks one closed question this being “are you 100% comfortable making the payment”, to which Mr K replied, “yes indeed”. Again, I think Santander ought to have done more here, and asked more open and probing questions in order that it could identify the sort of tailored warning that it would need to provide to him. I think it missed an opportunity to do this for a second time.

What kind of warning should Santander have provided?

- I've considered what Santander said it did, but I don't think it did enough bearing in mind what I have already said, based on what I heard in the 3 phone calls I've listened to (2 from 3 May 2023 and 1 from 16 May 2023). I think if it had asked open and probing questions and found out more, Santander ought to have then provided a tailored warning, detailing what a cryptocurrency based, investment scam looked like. It could have provided details about how these scams work.

Would a tailored warning have prevented the losses Mr K suffered?

- I am aware Mr K made a significant initial payment to the scammers, from another bank, and as I mentioned in my introduction this has been subject to another, settled complaint. I have read the details of this complaint though because I have considered what happened here, within the context of Mr K's payments from his Santander account to the scammers. This is because, if the first bank had made an effective intervention and delivered a tailored warning to Mr K, but he decided to proceed anyway, I would need to take this into consideration as to whether it was likely he would have done the same here too. So, I contacted that bank to find out more.
- The third-party bank said Mr K made this payment with his debit card and when he did, he received no intervention or warning from it. But this was because Mr K called earlier in the day to say he was making a large payment. It provided a recording of this call, and I have listened to it. Mr K made it clear to the third-party bank that he was making payment later in the day and that he wanted to give it notice. He said it was for an investment and mentioned the scammer's business name. The bank put a large payment marker on the system but didn't ask any further questions about the payment or what it was for. It didn't make any intervention at that point. So, I don't think the earlier payment made by Mr K has any bearing here as to what then happened between him and Santander.
- With this being the case, had Mr K been warned by Santander of the likelihood he was falling victim to a scam as I have described above, I'm persuaded he would've stopped his interactions with the scammers, from the first disputed payment onwards, this being the first point that Santander was able to make an intervention in its phone calls on 3 May 2023.
- I have taken into consideration Mr K's answers to Santander's questions but from what I have heard, he gave short yes / no answers to get his payment authorised. I think if he was probed more with open questions and asked what was going on here, Santander stood a chance to break the spell of the scammers. I haven't read anything that suggests to me he was being coached. I think, on balance, if Santander had asked more questions and then delivered a tailored warning, then Mr K would have more likely than not taken heed of this and not made the payments.

- Overall, I'm satisfied Santander should fairly and reasonably have made further enquiries and provided a tailored scam warning before processing the first disputed payment made by Mr K. If it had, it's more likely than not that the scam would have been exposed and Mr K wouldn't have lost money from this point. In these circumstances, I'm satisfied it's fair to hold Santander responsible for some of his losses.

Is it reasonable for Santander to be held responsible for Mr K's losses?

- Santander said it did not have sight of the loss from the account Mr K held with it. It said the loss needs to sit with the cryptocurrency provider. It said it's the other party that should be accountable for what happened here.
- I have considered that Mr K remained in control of his money after making the payments from Santander. It wasn't lost until he took further steps from his cryptocurrency account. But Santander should still have seen that Mr K was at risk of financial harm from fraud, made further enquiries about the first payment and ultimately prevented Mr K's loss from that point. I think Santander can fairly be held responsible for Mr K's loss in such circumstances.
- While I have considered all the facts of the case, including the role of other financial institutions involved, Mr K has chosen not to complain about any other firm for these disputed payments, and I cannot compel him to do so. And I do not think it would be fair to reduce Mr K's compensation because he only complained about one firm for the payments in question, as I consider that Santander should have prevented the loss.

Should Mr K bear any responsibility for his losses?

- I've gone on to consider whether Mr K should share some blame for his losses. The starting position for this is considering whether his actions fell below what I'd expect of a reasonable person.
- Here, I think Mr K ought to have carried out checks on the company that he was investing in, and it doesn't look like he did, other than take the word of his friend and read some trust pilot reviews. He was asked to open a cryptocurrency account, and hand over large amounts of money to another individual's wallet, without doing due diligence about whether this person or company was regulated or what rights or protection he had around this.
- Taking all of this into account, I've decided to reduce the award I'm making by 50% for Mr K's contributory negligence.

My final decision

For the reasons I've explained, my final decision is that I partially uphold Mr K's complaint. Santander Bank Ltd must:

- Pay Mr K 50% of his losses from the first disputed payment. This includes all disputed payments from payment 1 on 3 May 2023 to payment 5 on 16 May 2023. I understand this to be £9,216.50.
- Pay 8% simple interest per year on this amount from when the payments were made to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 September 2025.

Mark Richardson
Ombudsman