

### The complaint

Mr S complains that Santander UK Plc has unfairly refused to refund his losses after he fell victim to a scam.

Mr S is represented in his complaint by a professional third party but for ease I will refer to Mr S throughout.

### What happened

In early 2023, Mr S was contacted by an individual who described herself as an experienced investor working for company H. For ease, I will refer to the individual as 'the scammer'.

Mr S sent money from his Santander account to various cryptocurrency merchants – M, S and B. From there, it was forwarded on as part of the investment. Mr S says he realised he had been scammed when he tried to withdraw funds and was asked to pay withdrawal fees.

Mr S made the following disputed payments:

No.	Date	Type of transaction and merchant	Amount £
1	18 February 2023	Debit card payment - M	1,100
2	20 February 2023	Debit card payment - M	500
3	22 February 2023	Debit card payment - M	500
4	25 February 2023	Debit card payment - M	500
5	4 March 2023	Debit card payment - M	828.12
6	7 March 2023	Debit card payment - M	63
7	10 April 2023	Debit card payment - M	1,900
8	26 May 2023	Debit card payment - M	1,250
9	27 May 2023	Debit card payment - M	400
10	3 June 2023	Debit card payment - M	1,300
11	20 June 2023	Debit card payment - M	1,300
12	27 June 2023	Debit card payment - M	1,200
13	1 July 2023	Debit card payment - M	700

14	3 July 2023	Debit card payment - M	330
15	4 July 2023	Debit card payment - M	250
16	11 July 2023	Debit card payment - M	630
17	15 July 2023	Debit card payment - M	1,273
18	27 July 2023	Debit card payment - S	2,250
19	1 August 2023	Debit card payment - S	1,250
20	1 August 2023	Debit card payment - S	150
21	4 August 2023	Debit card payment - S	1,500
22	14 August 2023	Debit card payment - S	1,500
23	16 August 2023	Debit card payment - S	800
24	22 August 2023	Debit card payment - S	700
25	28 August 2023	Debit card payment - S	1,000
26	11 September 2023	Debit card payment - S	1,500
27	19 September 2023	Debit card payment - B	1,700
28	29 September 2023	Debit card payment - S	1,000
29	12 October 2023	Debit card payment - S	1,500
30	13 October 2023	Debit card payment - S	1,500
<b>Total</b>			<b>30,374.12</b>

### *Our investigation so far*

Our investigator upheld Mr S's complaint in part. He didn't think most of the payments were particularly unusual or suspicious when compared to Mr S's usual account activity. Our investigator didn't think most of the transactions were high enough in value to have raised any flags on Santander's system. Particularly as the payments were spread out over the course of several months.

However, our investigator thought that Santander should have been concerned when Mr S attempted to make a payment of £3,000 on 11 October 2023. Santander's fraud detection system flagged the payment and it spoke to Mr S. Our investigator didn't think that Santander's intervention went far enough. He thought that if Santander had asked Mr S appropriate questions about the payment, it would have uncovered the scam at this point.

Our investigator thought that Santander could have prevented Mr S's loss from 11 October 2023. As our investigator didn't think Mr S carried out enough due diligence before investing, he asked Santander to refund 50% of the payments marked 29 and 30 in the above table.

Mr S agreed with the investigation outcome but Santander did not. In summary, it said:

- By 11 October 2023, Mr S had already made several payments to S, so it was not a new merchant.
- When asked, Mr S said he had checked the FCA website, and the business was legitimate.
- The advisor mentioned that Mr S had not been asked to set up the payment/account/wallet, that it hadn't been set up by a third party and that he was sure it was not a scam.
- the Supreme Court decision of *Philipp v Barclays Bank PLC* imposed a strict duty on banks, where a customer's account is in credit, to execute a payment instruction.
- Mr S made the payments willingly and any loss arose after he forwarded money from his account with S.

As Santander doesn't agree with the investigation outcome, Mr S's complaint has come to me to make a final 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 Contingent Reimbursement Model Code doesn't apply in this case because Mr S carried out the transactions using his debit card.

Mr S doesn't dispute that he authorised the disputed payments from his Santander account. So, the starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) together with the terms of Mr S's account, is that he is responsible for payments he's authorised himself. And (as Santander has referenced) the Supreme Court has recently decided in *Philipp v Barclays Bank UK PLC*, that banks generally have a contractual duty to make payments in compliance with the customer's instructions – as Santander did in this case.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- The express terms of the current account contract may modify or alter that position. For example, in *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was different from being under a duty to do so.

The relevant terms and conditions of Mr S's account with Santander say that it can refuse any payment instruction if it reasonably suspects it relates to fraud or any other criminal act. So, although the current account terms did not oblige Santander to carry out further checks, they didn't prevent it from doing so either.

And, whilst Santander was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good practice at the time, it should fairly and reasonably have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Santander, do.

The detailed reasoning for this has been set out in substantial detail in recent decisions to Santander, so I don't intend to repeat it here.

But, overall, taking into account the law, regulators 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 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;
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – as in practice all banks do; and
- have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

*Should Santander have recognised that Mr S was at risk of financial harm from fraud?*

It isn't in dispute that Mr S fell victim to a cruel scam, nor that he authorised the payments he made from his Santander account to various cryptocurrency merchants. I am sorry to hear about the impact the scam has had on Mr S.

While there are known fraud risks associated with cryptocurrency, this does not mean that all transactions involving cryptocurrency are related to scams. And Santander has to strike a balance between allowing customers to use their account and stopping and questioning transactions.

In the context of Mr S's account and Santander's responsibilities, most of the payments he made don't seem sufficiently out of the ordinary for his usual spending to have prompted Santander to intervene. Unlike with a typical cryptocurrency investment scam, the transactions were spread out over the course of nine months. Given the value of the transactions and the extended period of activity, I don't think Santander missed any obvious signs that Mr S might be falling victim to a scam until he attempted to pay £3,000 to S on 11 October 2023.

The £3,000 payment was going to an identifiable cryptocurrency merchant – S. And the

value was higher than any of the previous payments Mr S had made. Although Santander spoke to Mr S about the transaction, I don't think its' line of questioning went far enough.

I take Santander's point that during the call it mentioned some aspects of a scam and that Mr S confirmed he was not making the payment as part of a scam. I have listened to the call. Although Santander referred to Mr S not having been asked to set up the payment/wallet, that it hadn't been set up by a third party and that he was sure it was not a scam, it didn't actually ask him to confirm this. Instead, Santander moved on to say that it wanted to establish that Mr S was sure about 'this company' and that he'd checked the company on the FCA website to be sure it was legitimate. Mr S didn't actually say that he had checked the FCA website but he did say that the company was legitimate. At the end of the day, the business which Mr S was making the payment to – S - was a legitimate cryptocurrency merchant. And Mr S understood H to be a legitimate investment company as he could see his investment account online. Santander didn't however ask Mr S any questions about what he was going to do with the cryptocurrency he wanted to purchase.

Given the value of the transaction which Mr S was trying to make, I would've expected Santander to find out more about what he intended to do with the funds after he had paid S. This could have included questions about his understanding of how the investment worked, how he had found out about the investment, if anybody was helping in the background and if he'd been asked to install software allowing third party access (as he had). The intention being to disrupt or uncover a potential fraud or scam.

I think a deeper probe by Santander would have made a difference. I say this in part because I have looked at the message transcripts supplied by Mr S. Although he appeared to trust the scammer much of the time, I can see that Mr S still had some concerns. For example, in May 2023, Mr S told the scammer that he thought she had conned him as he didn't have the funds to pay a fee to release his money. Then in September 2023, when Mr S was trying to gain access to the funds in his 'investment', he told the scammer the whole thing was based on false promises. Mr S appeared to have a growing sense of concern at being asked to deposit money to withdraw his funds. So, if Santander had asked him more probing questions about the purpose of the October 2023 transaction (with the benefit of its' knowledge about the known risks at the time of investing in cryptocurrency) I think it likely that it would have uncovered the scam. Particularly as I haven't seen evidence to suggest that the scammer had coached Mr S to lie.

*Should Mr S bear any responsibility for his losses?*

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 layman with limited to no investment experience, Mr S may have found the scammer's explanation of the investment to be persuasive particularly as he was also able to view his investment growing online. But there were other elements about the scam that ought to have caused Mr S to be concerned. For example:

- The scammer contacted Mr S out of the blue, yet he trusted what she told him about the investment and what actions he needed to take.
- The scammer asked Mr S to deposit more money to withdraw existing funds which seems unusual for a legitimate investment.
- Whilst Mr S says that he looked H up online, he didn't undertake further research. So, it seems that he decided to invest large sums of money based on little research or knowledge of what he was doing.

- At points during the scam, Mr S expressed concerns to the scammer. He wondered whether he might have been 'conned' or fed 'false promises'. Yet, Mr S continued to make payments without conducting further research.

So, I agree with our investigator that Mr S needs to bear a shared responsibility for his losses here. Balancing his role in this with the fact that Santander's intervention was not strong enough, I think 50% is a fair deduction to the amount reimbursed. Mr S has already accepted our investigator's recommendation on this point.

### *Recovery*

I can't see that Santander could have successfully raised a chargeback on Mr S's behalf as while I accept he was deceived by the scammer, his transactions with M, S and B were separate to this. Mr S instructed the cryptocurrency merchants to use his funds to buy, and then send on cryptocurrency. It fulfilled this request, so Mr S received the services he paid for.

### **Putting things right**

To put things right, Santander should:

- Refund 50% of the transactions marked 29 and 30 on the table set out above; and
- Pay 8% interest on the refunded transactions from the date of loss to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint and direct Santander UK Plc to put things right as set out in the above section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 May 2025.

Gemma Bowen  
**Ombudsman**