

The complaint

Mr P is being represented by solicitors. He's complaining about Santander UK Plc because it declined to refund money he lost as a result of fraud.

What happened

Sadly, Mr P fell victim to a cruel investment scam. He says he responded to an online advert offering what appeared to be a low-risk investment opportunity trading in securities. He was contacted by the scammer who talked him through the process of investing, which required him to purchase cryptocurrency. Mr P was set up with a login to a fake platform that appeared to show the progress of his investment and over time the scammer persuaded him to pay more and more into the scheme. Mr P made the following payments to the scam:

No.	Date	Amount £
1	21 Jun 2023	1,967.47
2	14 Jul 2023	1,000
3	14 Jul 2023	9,000
4	18 Jul 2023	5,000
5	20 Jul 2023	15,000
6	31 Jul 2023	2,000
7	1 Aug 2023	5,000
8	10 Aug 2023	7,700
9	14 Aug 2023	7,900
10	21 Aug 2023	3,500

Santander initially thought the above payments went to an account in Mr P's own name with another institution, but that institution has since confirmed he had no account and it merely processed the payments for the actual recipient, a cryptocurrency exchange.

Our investigator recommended the complaint be partly upheld. He felt Santander should have contacted Mr P before processing payment 5 to discuss its purpose. If it had done, he felt the scam would most likely have been uncovered and stopped at that point. He recommended Santander should refund payments 5 to 10 with a deduction for Mr P's contribution to his own loss.

Mr P accepted the investigator's assessment. Santander didn't and made the following key points:

- A transfer to an account in Mr P's own name wouldn't have appeared unusual or suspicious.
- The loss occurred after the money was transferred from Santander and the claim lies with the receiving institution.

The complaint has now been referred to me for review.

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 overall conclusions as the investigator, and for broadly the same reasons. In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time. I haven't necessarily commented on every single point raised but concentrated instead on the issues I believe are central to the outcome of the complaint. This is consistent with our established role as an informal alternative to the courts.

In this case, there's no dispute that Mr P authorised the above payments.

In broad terms, the starting position at law is that a such as Santander is expected to process payments a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of their account. In this context, '*authorised*' essentially means the customer gave the business an instruction to make a payment from their account. In other words, they knew that money was leaving their account, irrespective of where that money actually went.

This notwithstanding, there are some situations where we believe a business, taking into account relevant rules, codes and best practice standards, shouldn't have taken its customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Santander also has a duty to exercise reasonable skill and care, pay due regard to the interests of its customers and to follow good industry practice to keep customers' accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

Taking these points into account, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr P.

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

After reviewing Mr P's previous account activity, and in view of the amounts involved, I don't think there was anything about particularly suspicious about payments 1 to 4 that should have alerted Santander to the possibility of fraud.

But by the time of payment 5, I think Santander should have begun to identify potential concerns. £15,000 was a large sum and transferring this amount was out of character with previous account activity, particularly as Mr P had transferred £5,000 only two days earlier and a further £10,000 only six days previously. It's not clear that Santander knew this money was being used to purchase cryptocurrency, but even so I believe this pattern of activity should have led it to identify that Mr P could be at risk of harm from fraud.

What did Santander do to warn Mr P?

Prior to payment 1 on 21 June 2023, Santander says it presented Mr P with a dynamic warning, which required him to say where the money was going. It says he answered that the money was going '*to my banking or savings account*' and he was then presented with a

series of relevant questions and warnings, most of which appear to relate to safe account-type scams. Santander says Mr P could have instead said the money was going *'to an investment or savings bond'*, in which case I understand he'd have been presented with a different series of questions warnings.

I've thought carefully about this and I don't think Mr P's choice to answer the question asked in the way he did should be seen as particularly significant. Santander accepted that *"as far as we are aware [Mr P] was under no pressure to answer the questions in the manner he chose"* and I don't think the answer he gave was necessarily unreasonable since he seems to have believed the money was initially going to another account in his own name from where he thought cryptocurrency would be purchased.

As I understand it, no further interventions were attempted before payments 2 to 10 were processed.

What kind of warning should Santander have provided?

Having thought carefully about the risk presented by payment 5, I think a proportionate response to that risk would have been for Santander to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mr P's account. I think it should have done this by, for example, speaking to him on the phone to discuss the payment further.

If Santander had intervened as described, would that have prevented the losses Mr P suffered from payment 5?

After reviewing the correspondence between Mr P and the scammer provided, and as Santander seems to have accepted, there's no evidence he was under pressure from or being coached to lie to the bank about the reasons for the payment. On balance, I think it's likely he'd have answered any questions asked by the bank honestly and truthfully.

With this in mind, I think an appropriately trained member of the bank's staff would have established that Mr P was ultimately using the money to invest and that he was being coached by someone who'd contacted him online and whom he'd never met. I also believe they'd have been able to obtain the name of the scam company Mr P believed he was investing with and establish it wasn't authorised to carry out regulated activities.

These are all common features of investment scams and, once these points were established, Santander could have provided a clear and tailored warning about the common features of investment scams. If it had done this, I think it's likely that Mr P would have recognised his own situation and the warning would have resonated with him for that reason. On balance, I think the scam would most likely have been uncovered and the payment stopped.

I think it follows that if the scam had been stopped at the point of payment 5, payments 6 to 10 would also have been prevented.

Is it fair and reasonable for Santander to be held responsible for some of Mr P's loss?

This was a multi-stage fraud that saw Mr P move money from Santander (some of which was previously transferred to Santander from an account with another bank) to a cryptocurrency exchange and then eventually onto the scammer. This complaint is about Santander and it's not appropriate for me to comment here on whether or not the other institutions in this chain should have identified a risk of fraud and whether they reacted proportionately. But to obtain a full picture of what took place, we have contacted the other

bank and the business that processed the payment from Santander to the cryptocurrency exchange to obtain any further relevant information.

Both have confirmed they didn't attempt to intervene in the transactions being made and that they've received no complaint from Mr P. This means that I don't think there was any intervention by anyone other than Santander that should particularly have alerted Mr P to the fact he was speaking to a scammer or that changes my views about how Santander should have dealt with this situation and whether he acted reasonably in the circumstances with which he was faced.

Overall, for the reasons I've set out above, I'm satisfied it's fair to hold Santander responsible for Mr P's loss from payment 5, subject to a deduction for his own contribution towards this. The potential for multi-stage scams ought to have been well known to Santander. And as a matter of good practice, I consider it fair and reasonable that Santander should have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams.

I have also taken into account that other businesses were involved in the overall process that ended up with payment 5 being lost to the scam, and that Mr P might potentially have a claim against them in respect of their actions (although those businesses are not party to this complaint and so I make no finding about their role here).

Whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against more than one financial business about connected circumstances, Mr P has not referred a complaint about any other business to me and DISP does not empower me to instruct him to make or refer a complaint to me about another business.

Should Mr P bear any responsibility for his losses?

I've also considered whether it would be fair and reasonable for Mr P to bear some responsibility for his own losses here. 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've considered the evidence carefully and, while I accept Mr P believed these payments were being made in connection with a legitimate investment opportunity, I'm not persuaded that belief was a reasonable one throughout the course of the scam.

Based on the information he had at the outset, I think Mr P was entitled to believe he was making a genuine investment. But I'm conscious that by the time of payment 5, he was being told that what he believed was a low-risk investment had lost the money he'd invested only a few days earlier and that he should invest an even larger sum to recoup his losses. At this point, I think he should have become concerned that the investment wasn't what he'd initially believed it to be.

As things progressed, the scammer began asking for various fees (that hadn't been discussed previously) to make withdrawals and Mr P appears to have been being told he'd made extremely high returns that I think should reasonably have led him to question whether this was too good to be true. In the circumstances, I think he ought to have proceeded only with great caution. If he'd carried out any further research, for example online searches, I think he'd have quickly discovered his circumstances were similar to those commonly associated with investment fraud. He would also have been able to discover that the scam investment company wasn't authorised by the regulator and I understand there were also

negative online reviews warning this was a scam by this time. Overall, I think it's fair and reasonable for Santander to make a 50% deduction from the redress payable.

Recovery of funds

I've also looked at whether Santander could or should have done more to try and recover Mr P's losses once it was aware that the payments were the result of fraud.

I understand Santander was first notified of the fraud at the same time as Mr P registered his complaint, approximately three months after the last payment in August 2023. It's a common feature of this type of scam that the fraudster will move money very quickly to other accounts once received to frustrate any attempted recovery. While the payment processing firm to which the money was originally sent has confirmed Santander did contact it to try and recover the losses, it's confirmed the funds had gone by this point and that's not surprising. In the circumstances, I don't think anything that Santander could have done differently would likely have led to those payments being recovered successfully after this period of time.

In conclusion

For the reasons I've explained, I don't think Santander acted fairly and reasonably in its dealings with Mr P and I'm upholding this complaint in part. While I don't think it acted incorrectly in processing payments 1 to 4 in line with Mr P's instructions, if it had carried out an appropriate intervention before payment 5 debited his account, I'm satisfied payments 5 to 10 would have been prevented.

Putting things right

The principal aim of any award I make must be to return Mr P to the position he'd now be in but for the errors or inappropriate actions of Santander, while allowing for any responsibility he should reasonably bear. If Santander had carried out an appropriate intervention as I've described, I'm satisfied the scam would have been stopped and Mr P would have retained the money that was lost from payment 5 onwards. As outlined above, I've applied a 50% deduction to the amounts to be refunded in recognition of Mr P's own contribution towards the loss.

To put things right, Santander should pay Mr P compensation of A + B, where:

- A = a refund of 50% of each of payments 5 to 10 outlined above; and
- B = simple interest on each amount being refunded in A at 8% per year from the date of the corresponding payment to the date compensation is paid.

Interest is intended to compensate Mr P for the period he was unable to use this money. HM Revenue & Customs (HMRC) requires Santander to deduct tax from any interest. It must provide Mr P with a certificate showing how much tax has been deducted if he asks for one.

I'm satisfied this represents a fair and reasonable settlement of this complaint.

My final decision

My final decision is that I partly uphold this complaint. Subject to Mr P's acceptance, Santander UK Plc should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 March 2025.

James Biles
Ombudsman