

The complaint

Mr M is complaining about Santander UK Plc because it declined to refund money he lost as a result of fraud.

What happened

Sadly, Mr M fell victim to a cruel investment scam. He already held an online trading account that he says he'd used to trade a small amount in stocks and shares. Following discussions with people he met online in a WhatsApp group, he was encouraged to invest in cryptocurrency on a trading platform that turned out to be fake.

To fund the fake investment, Mr M transferred two payments of £10,000 and £20,000 (on 3 and 6 July 2023 respectively) to his existing trading account. As part of the scam, he set up a cryptocurrency wallet with the trading platform and then transferred money to another cryptocurrency wallet controlled by the scammers.

Mr M subsequently realised he'd been scammed and reported this to Santander on 28 July 2023. It said it hadn't been able to recover his money and declined to reimburse him as he'd authorised the payments and they'd gone to an account in his own name. Santander also said the payments weren't flagged up by its fraud detection processes, partly because Mr M was paying to an account in his own name and from an IP address he'd used previously.

My provisional decision

After the complaint was referred to me, I issued my provisional decision setting out why I thought it should be upheld. My reasons were as follows:

In broad terms, the starting position at law is that a bank 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.

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

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 M.

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

The payments went to an investment trading platform and Santander should have been able to identify this. I've reviewed the transaction history for Mr M's Santander account covering the previous 12 months and I can see it held a significant positive balance and that Mr M had made substantial payments out of it during this time, but the history appears to confirm his recollection that most of these went to his business account.

I can also see that Mr M had held his trading account for some time and transferred money to it previously, although he'd only done so on five occasions in the previous year and the amounts involved were relatively low, ranging from £250 to just over £1,000. He also made four withdrawals during the same period and this is all consistent with his recollection that he only had around £1,000 in the account.

I accept the trading platform Mr M used catered for a variety of types of investment and that Santander wouldn't necessarily have known he was intending to buy cryptocurrency. But irrespective of the fact he was paying to an account in his own name, I think Santander should have identified two payments totalling £30,000 in the space of four days was significantly out of character with what had gone before and that he may be at risk of harm from fraud.

What did Santander do to warn Mr M?

In response to Mr M's complaint, Santander said the payments weren't flagged as suspicious and it doesn't appear to have provided any detailed fraud or scam warnings.

What kind of warning should Santander have provided and would this have prevented Mr M's losses?

As I've said above, I think Santander would have known the payments were going to an investment trading platform and should have identified Mr M may be the victim of an investment scam and taken measures to question the payments and provide appropriate warnings before processing them.

When the first payment instruction was received on 3 July, at the very least I think Santander should have provided a tailored warning setting out the key features of common investment scams. For example, that victims are often approached out of the blue by people they've never met promising returns that sound too good to be true; many investment scams are initiated and conducted online and using social media; the scammers generally guide their victims through the process; cryptocurrency is often used to facilitate such scams, and scammers often produce fake websites and platforms to give the appearance that the victim's money has been invested and is generating returns.

If Mr M had received such a warning, I think it's likely this would have resonated with him as most of the features I've listed directly applied to his own situation. A partial history of his chats with the scammer has been provided and I've seen nothing to indicate he was coached about ignoring warnings from his bank. And on balance, I think a carefully tailored warning of the type I've described would most likely have

caused Mr M to reflect carefully on what he was doing and ultimately decide not to proceed.

If the first payment had been prevented in the way I've described, I think it follows that the fraud would have been prevented and Mr M wouldn't have lost out. But even if he had still decided to continue with the first payment, I think the second payment on 6 July, which was for a larger amount and was the second payment in the space of only four days, warranted an even more robust intervention from Santander.

On this occasion, I think it should definitely have spoken to him to clarify the purpose of the payment. During such a conversation, I would have expected Santander to ask open questions designed to establish whether any of the common scam features I've outlined above applied to his situation and, if they did, to have confirmed that it looked like he was being scammed.

Based on the evidence provided, I've no reason to think Mr M wouldn't have been honest with Santander about what was going on. As I've said already, there was no evidence he was being coached by the scammer to be untruthful if contacted by his bank. And, if such a conversation had been necessary because he'd chosen to proceed with the first payment following an appropriate warning, I think it's likely this would have prevented any further payments.

Should Mr M 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.

In reaching a conclusion on this issue, I've been mindful that the scam involved only two payments that were made in quick succession. I don't think there's any dispute that Mr M believed he was being offered a genuine investment opportunity. And while subsequent developments should have led (and did lead) him to question whether everything was as it should be, I don't think that was an entirely unreasonable belief in view of the information he had available at the time the second payment was made on 6 July 2023.

On balance, I don't think it's appropriate for Santander to make a deduction from any compensation due for contributory negligence on Mr M's part.

In conclusion

In the circumstances described, I currently think Santander should have identified there was a real risk Mr M was the victim of a scam and taken steps to provide an appropriate intervention before the payments were made. If that had happened, I think the payments wouldn't have proceeded and that Mr M wouldn't have lost his money. It's for these reasons that I'm currently proposing to uphold his complaint.

The responses to my provisional decision

Mr M accepted my provisional decision and Santander has made no further comment.

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.

As neither party has made any further submissions, my findings haven't changed from those I set out previously.

Putting things right

The principal aim of any award I make must be to return Mr M to the position he'd now be in but for the errors or inappropriate actions of Santander. If Santander had carried out an appropriate intervention as I've described, I'm satisfied the scam would have been stopped and Mr M would have retained the money that was lost.

To put things right, I currently think Santander should pay Mr M compensation of $A + B$, where:

- $A = £30,000$, representing the total amount he transferred to fund the fraud; and
- $B =$ simple interest at 8% per year on £10,000 from 3 July 2023 and £20,000 from 6 July 2023 to the date compensation is paid.

Interest is intended to compensate Mr M for the period he was unable to use this money. HM Revenue & Customs (HMRC) requires Santander to deduct tax from any interest. Mr M has requested a certificate showing how much tax has been deducted and Santander should provide him with this.

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

In answer to Mr M's question about how compensation is paid, I'd expect Santander to either confirm this with him once it's been calculated or to pay it back into the account the money was taken from if it's still open. But if Mr M has any particular requirements, he should let our investigator know so we can pass that information onto Santander.

My final decision

My final decision is that I uphold this complaint. Subject to Mr M'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 M to accept or reject my decision before 5 February 2025.

James Biles
Ombudsman