

The complaint

Mr S complains about Santander UK Plc.

He says that Santander didn't do enough to protect him when he became the victim of a scam and would like it to refund him the money he has lost.

What happened

Mr S was looking for work and applying for jobs online, uploading his CV to a number of different websites. Soon after, he received a message via WhatsApp from an individual offering him a job opportunity in task based online work.

Mr S was interested in the opportunity as a way to earn more money for him and his family. It was explained to Mr S that he would need to purchase tasks with cryptocurrency and would then earn commission.

Unfortunately, things began to go wrong - and Mr S realised he had fallen victim to a scam, by which time he made the following payments.

Payment	Date	Payee and type	Amount
1	28/09/2023	Card to crypto	£77
2	28/09/2023	Card to crypto	£70
3	28/09/2023	Card to crypto	£32
4	29/09/2023	Faster payment	£1,100
5	29/09/2023	Faster payment	£1,386
6	29/09/2023	Payment cancelled	£2,475
7	30/09/2023	Card to crypto	£500
8	30/09/2023	Card to crypto	£500
9	30/09/2023	Card to crypto	£500
10	30/09/2023	Card to crypto	£500
11	30/09/2023	Card to crypto	£500
		Total loss	£5,165

He complained to Santander, but it didn't uphold his complaint.

Mr S then brought his complaint to this Service – and our Investigator looked into things.

Our Investigator recommended that Santander refund Mr S 50% of the last five payments made to the scam. Mr S accepted this, but Santander did not.

It said that its staff member had done enough to try and uncover the scam when it detected an unusual payment Mr S was trying to make. It also made reference to the Supreme Court Judgement in the case of Philipp vs Barclays Bank Plc UK [2023] UKSC 25 which confirmed that where a bank receives instruction from a customer which is clear and leaves no room for interpretation and the customer's account is in credit, the bank's primary duty is to execute the payment instruction. As they felt they received a clear instruction from Ms E to

send funds, they did not agree that there was any room for interpretation from them. In addition, they reiterated Mr S's loss did not take place from his Santander account, but from his crypto wallet, so they should not be responsible for reimbursing him.

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 decided to partially uphold this complaint, for broadly the same reasons as our Investigator. I'll explain why.

It isn't in dispute here that Mr S has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised – which I am satisfied that Mr S did here.

And while Mr S didn't intend the money to go to scammers, the starting position in law is that Santander was obliged to follow his instruction and process the payments. Because of this, he is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

So, I've also thought about whether Santander did enough to try to keep Mr S's account safe. In reaching my decision, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC* [2023] UKSC 25.

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 not the same as being under a duty to do so.

In this case, Santander's terms and conditions gave it rights (but not obligations) to:

1. Refuse any payment if the payment may be connected to a scam, fraud or any other criminal activity (for example, because the payment is unusual or has features that suggest it may be connected to such activity or the account you're making the payment to has been connected to such activity).

2. Delay payments while fraud prevention checks take place and explained that it might need to contact the account holder if Santander suspects that a payment is fraudulent.

So, the starting position at law was that:

- Santander was under an implied duty at law to make payments promptly.
- It had a contractual right not to make payments where it suspected fraud.
- It had a contractual right to delay payments to make enquiries where it suspected fraud.
- It could therefore refuse payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things.

Whilst the current account terms did not oblige Santander to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Santander from making fraud checks before making a payment. 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.

In this instance, Santander *did* contact Mr S when he attempted to make a payment for around £2,000 from his account – although the payment never actually debited the account as Mr S said that he had decided not to make the payment after all – but I don't think that he did this because Santander uncovered the scam.

I do think that this was an appropriate time for Santander to contact Mr S, as prior to this, I don't think that the payments he had made so far were significantly unusual or suspicious enough to warrant an intervention – they weren't particularly large, and while they were going to a crypto exchange, this doesn't necessarily mean that the payment is part of a scam, and it would be unreasonable for Santander to have to contact a consumer for every payment of this type.

Having listened to the call that took place, I don't think that Santander went as far as it should have done when it questioned Mr S, although I know that Santander disputes this.

While the Santander representative did ask Mr S questions about the payment, such as if they were doing it on their own, or if they had been contacted via social media, or added to a messaging group. Mr S said that he had not done so and was making the payments on his own.

But I don't think that Santander went as far as it should have done, given the prevalence of scams - and it should have asked probing and appropriate questions about what he was doing, how he came across the opportunity, and provided him with effective and tailored warnings covering a range of different types of crypto scams, including task-based job scams (which were becoming more prevalent at this time). By this point, Mr S's payments were increasing, and going to a known crypto provider, which carried an elevated risk, which Santander should have been aware of. And I don't think that Mr S would have ignored such

a warning from his trusted bank, and I don't think he would have continued with the payments.

I also don't agree with Santander about the loss not occurring from Mr S's account with Santander, so it should not be liable for the loss. Santander should be aware that when a scam takes place, the funds are moved on very quickly from one crypto wallet to another – and as I've said above, I think it could have prevented this.

Finally, I do need to consider if Mr S should bear some responsibility for the loss – and having thought about this carefully, I agree with our Investigator that responsibility for the loss should be shared between Mr S and Santander from the time Santander intervened.

I say this because I don't think that Mr S was as careful as he should have been before parting with his money. He was contacted by someone offering him a job he didn't apply for (although he had shared his CV online) and it doesn't appear that he had to undertake any kind of onboarding measures with the promise of unrealistic returns. He should also have had concerns about having to part with money and purchase crypto in order to earn money which is highly unusual.

Putting things right

Santander UK Plc should refund Mr S 50% of the last five payments which were made after the intervention took place. On top of this, it should pay Mr S 8% simple interest from the date the payment was made until settlement (less any lawfully deductible tax).

My final decision

I uphold this complaint in part, Santander UK Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 February 2025.

Claire Pugh
Ombudsman