

The complaint

Mr O complains about Santander UK Plc.

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

What happened

Mr O had joined an online dating site and matched with an individual called N. They began chatting and exchanging pleasantries about everyday life, building up a rapport, before the chat moved to text and video calls.

N seemed genuine, and after a while the chat turned to investing, as this is what N had told Mr O she did. N seemed knowledgeable in this area and told Mr O that she could help him to invest and become successful through cryptocurrency.

Mr O was persuaded to begin investing and made two payments from his account with Santander of £10, and £4,990 on 8 October 2023, to a crypto platform, from which it was transferred to a 'platform' which N helped him open. But unfortunately, Mr O had fallen victim to a scam.

He complained to Santander about what had happened – but it didn't uphold his complaint, so Mr O brought his complaint to this Service.

Our Investigator looked into things, and thought that Mr O's complaint should be upheld in part – and that Mr O should also share responsibility for some of the loss as he wasn't as careful as he should have been before parting with his money.

Mr O accepted this, but Santander did not. It said in response to the investigators view that it wasn't the point of loss.

As no agreement was reached, the complaint has been passed 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.

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 O 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 O did here.

And while Mr O 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.

However, this isn't the end of the story. 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 O'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 any event, Santander *did* block the second payment of £4,990, and spoke with him on the phone – and I think that it was right to do so at this point – the payment was large and was going to a well-known crypto exchange, and while not all payments to crypto are as a result of a scam, Santander should be well aware of the heightened risk associated with such payments and the prevalence of crypto related scams.

Santander has provided a copy of the call that took place between it and Mr O which I have listened to.

During this call, while Mr O wasn't entirely clear about what he was doing, I don't agree that Santander went far enough to establish the risks that were associated with the payment. Mr O explained to the advisor that he was purchasing crypto, and that the funds were going to a third-party app. While the advisor asked him if he had done his own research into the investment, and he confirmed that he had, I cannot agree that it went as far as it should have done – especially when Mr O said that the money would be transferred to a third-party. Mr O also said that the third-party was regulated – but Santander should have known that this is not applicable for cryptocurrency.

While it isn't this Services role to prescribe exactly what questions Santander should have asked Mr O, I think that it should have explored further around how Mr O came across the investment, who the third-party was, and discussed proposed returns Mr O was expecting – and provided him with a warning about crypto investment scams and how they work – but it didn't do so. I haven't seen any evidence that Mr O was told to lie to the bank, or hide what he was doing, so I think he would have been honest about what he was doing and why – and from this I think Santander would have concluded that it was likely Mr O was being scammed and told him so. And I don't think that Mr O would have ignored a warning like this, so the payment would not have gone through.

In deciding Mr O's case, I have taken into account that Santander doesn't feel that it is the point of loss – and that Mr O should take this up with the crypto exchange from where the money was lost to the scammer – but I don't think this absolves Santander of its own responsibilities here. At the time Mr O made the payment, Santander was well aware of scams involving crypto – and it identified the risk, but didn't go far enough in mitigating that risk, and I think it could have prevented the majority of Mr O's losses.

The only thing left for me to consider is if Mr O should bear some responsibility for his losses from the point at which Santander could have uncovered the scam. As Mr O has already agreed with the outcome that our Investigator has recommended, I will keep this brief. But in summary, I don't think that Mr O was as careful as he should have been before parting with his money. He agreed to invest with a person he had only been talking to for a short while via a dating app, and the returns he was promised seemed implausible and too good to be true. And I am not persuaded that Mr O did enough research into what he was doing before

deciding to part with his money.

Putting things right

Revolut Ltd should refund Mr O 50% of the £4,990 payment and pay Mr O 8% simple interest from the date of the payment to settlement.

My final decision

I uphold this complaint in part. Revolut Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 5 June 2025.

Claire Pugh
Ombudsman