

The complaint

Mr C complains that Santander UK Plc (Santander) won't refund any money he lost in an investment scam.

What happened

What Mr C says:

Early in 2022, Mr C decided to start investing to provide a secondary income and to support his family. He says he did a lot of online research and after a while followed someone on Instagram. He contacted the person and asked more questions.

Then someone contacted him. She explained she could arrange short term investments in stocks and bonds. She was to undertake all the trades to save Mr C time – he was working full time so didn't have the time himself.

The minimum investment was to be £500. She set him up with an account and would provide help and support in completing the trades. Mr C was an inexperienced investor - he had made a few investments before - which hadn't made any profits.

Payments were made to a money remittance service (which I will call 'firm A') and from there to the scammers. Payments were made as follows - some were said to be to pay tax, others for late payment fees, others to the 'investment fund'. Mr C was told he could make a profit of about £15,000 for the money he put in.

A number of credits were also received – these reinforced his trust that the investment was genuine. **(continued)**

The payments and credits were:

Date	Payment	Amount
30 April 2022	Debit card to remittance firm A	£500

5 May 2022	Debit card to remittance firm A	£1,001.99
7 May 2022	Debit card to remittance firm A	£1,002.91
9 May 2022	Credit from firm A	(£1,002.91)
10 May 2022	Debit card to remittance firm A	£1,003.52
11 May 2022	Credit from firm A	(£1,003.52)
13 May 2022	Debit card to remittance firm A	£1,003.52
15 May 2022	Credit – from person	(£250)*
18 May 2022	Debit card to remittance firm A	£1,003.52
25 May 2022	Debit card to remittance firm A	£602.99
28 May 2022	Debit card to remittance firm A	£352.99
25 June 2022	Debit card to remittance firm A	£352.99
8 July 2022	Debit card to remittance firm A	£202.99
15 July 2022	Credit – from person	(£250)
16 July 2022	Debit card to remittance firm A	£402.99
18 July 2022	Credit from firm A	(£402.99)
18 July 2022	Credit – from person	(£499.00)
20 July 2022	Debit card to remittance firm A	£902.99
5 August 2022	Debit card to remittance firm A	£1,302.99
8 August 2022	Debit card to remittance firm A	£1,302.99
10 August 2022	Debit card to remittance firm A	£902.99
17 August 2022	Debit card to remittance firm A	£1,502.99
31 August 2022	Debit card to remittance firm A	£1,502.99
26 September 2022	Debit card to remittance firm A	£302.99
4 October 2022	Debit card to remittance firm A	£401.99
13 October 2022	Debit card to remittance firm A	£852.99
16 October 2022	Credit – from person	(£250)
18 October 2022	Credit – from person	(£599.00)

19 October 2022	Credit – from person	(£250)
20 October 2022	Debit card to remittance firm A	£752.99
22 October 2022	Debit card to remittance firm A	£952.99
22 October 2022	Credit – from person	(£300)
27 October 2022	Credit – from person	(£300)
7 November 2022	Credit – from person	(£400)
7 November 2022	Credit – from person	(£350)
11 November 2022	Credit – from person	(£100)*
6 December 2022	Debit card to remittance firm A	£503.99
9 December 2022	Debit card to remittance firm A	£803.99
14 December 2022	Debit card to remittance firm A	£1,303.99
18 December 2022	Credit – from person	(£1,000)
21 December 2022	Debit card to remittance firm A	£1,003.99
4 January 2023	Credit – from person	(£2,000)*
5 January 2023	Debit card to remittance firm A	£1,003.99
7 January 2023	Debit card to remittance firm A	£803.99
12 January 2023	Credit – from person	(£500)*
14 January 2023	Debit card to remittance firm A	£1,503.99
16 February 2023	Credit – from person	(2,075)*
Total (net of credits)		£13,508
<i>(Includes: Total credits from persons)</i>		<i>(£9,123)</i>

**Identified by Ombudsman's review; Mr C's advisors confirmed part of scam receipts*

On 9 November 2022, Santander intervened and spoke to Mr C. His account was then blocked – and he was asked to visit a branch, which he did. The account was then unblocked in late November 2022.

As a result of the scam, Mr C lost all his savings. He also borrowed £10,000 on a loan. He

wanted to provide for his young family and now is struggling to do so. He is having difficulty in paying bills and has been affected mentally. He struggles to sleep and has become nervous and mistrusting.

Mr C says Santander should have done more to protect him. He authorised the transfers but there weren't any warnings or interventions from the bank. There was one call, but it wasn't effective. Mr C says Santander should refund the money he's lost.

What Santander said:

Santander didn't refund any money. The bank's fraud team said the payments were by debit card – and these were not covered under the (Contingent Reimbursement Model) code. After Mr C complained, the complaints team declined Mr C's complaint in its final response.

Our investigation so far:

Mr C brought his complaint to us via a third-party claims firm. Our investigator upheld it. He said the payments up to 9 November 2022 didn't warrant intervention for Santander. He said:

- there were other, similar size payments leading up to the scam payments.
- The size of the payments was not unusual and they were to a remittance service, so wouldn't have stood out as being typical of a fraud.
- The payments didn't take place in rapid succession either – so weren't typical of a fraud pattern.

But – he said when Santander spoke to Mr C on 9 November 2022, the bank should've done more. Mr C's account had been blocked due to the payments coming into it. Mr C was asked to go to a branch and provide evidence of the investments he was making. But our investigator said the bank could have done more at that stage. The bank didn't probe enough as to what he was investing in; how he had made the contact and why.

So – he said Santander should refund the payments made after 9 November 2022. But – this should be reduced by 50% for contributory negligence. This was because he felt Mr C could've done more to protect himself. The return of £15,000 on an investment of £500 was too good to be true. And there was evidence that Mr C thought he was the victim of a scam - but still went ahead.

So, in summary, our investigator said Santander should refund 50% of the payments after 9 November 2022, less the amount of the credits received after that date. This would've meant that Mr C got a refund of 50% of £5,926 – as the further credits shown in the schedule above hadn't been considered.

Mr C accepted this outcome but Santander didn't. The bank said that on the call on 9 November 2022, Mr C was advised there was a scam going on. And the payments after that time were not out of character anyway – and so didn't flag on the bank's systems. Mr C chose to make the payments despite the warnings made by the bank. So, Santander said they weren't liable to refund any money.

Our investigator didn't agree and Santander maintained its stance, and so Mr C's complaint has come to me to look at.

I reached a provisional decision which didn't uphold Mr C's complaint. It said:

I'm sorry to hear that Mr C has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr C didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 anti-money laundering, countering the financing of terrorism, and 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.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether Santander acted fairly and reasonably in its dealings with Mr C when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to faster payments made to a different UK beneficiary – and in this case, the payments were made by debit card – and to Mr C's own account with firm A.

The important matter here is whether this was a payment that Santander might reasonably have considered unusual, and therefore whether they should've held or stopped the payment and contacted Mr C about it.

I looked at Mr C's account history with Santander. And I don't think the payments were unusual for him. For example, I can see the following payments were made – in the period leading up to, and then during the time of the scam payments:

July 2021: cash £5,000.

August 2021: payment £10,000.

September 2021: payment £4,200, cash £1,000, payment £1,590.

November 2021: payment £2,000, £500, £400, £1,000.

December 2021: cash £4,000.

January 2022: cash £800, payment £1,680.

March 2022: payment £872.

April 2022: payment £600.

July 2022: payment £2,000, £3,000.

September 2022: payment £2,000, £5,000.

There's a balance to be made: Santander has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think Santander acted reasonably in processing the payments.

It is also the case that the payments were spaced out over a eight months – which isn't typical of a scam pattern; and they were to a known remittance firm (rather than say to a crypto exchange – which might have indicated a possible scam)

Our investigator was of the view that Santander could've done more when they spoke to Mr C on 9 November 2022. I listened to that call.

The bank had blocked Mr C's account as they were concerned as to what was going on – they asked him what the various credits were at that time – those for £300, £250 and £250. Mr C said he was investing in crypto currencies. He said the senders of the money were lending him money to invest and he would pay them back. The bank asked him for evidence of the investment scheme – as they were concerned.

On the call, Mr C said *"I think I'm being ripped off...sounds dodgy I know....I could be a victim of being scammed"*.

Santander's call handler then said: *"looks like you are being scammed"*.

So – the bank was put on notice that a scam was taking place – but equally, it's also clear that Mr C knew that as well.

I considered whether the bank then took the action we would've expected of the firm.

They blocked Mr C's account and asked him to go to a branch with evidence of the investment /payments being made. Santander haven't been able to provide a note of the conversation that took place at the branch - but the account was unblocked in late November 2022 or very early December 2022 – and Mr C then continued to make payments again.

I can see from his Instagram chats with the scammer – that he visited the branch and his account was unblocked in late November 2022/early December – and he then went ahead to make more payments. So, on the balance of evidence, I'm persuaded that he gave the necessary assurances to the branch that he was involved in what he thought was a credible investment scheme – and he then carried on making payments.

We asked Mr C (though his advisers) what was discussed at the branch – but he says he can't recall.

Could Santander have prevented Mr C from making the payments?

I also reviewed the chats on WhatsApp and Instagram between Mr C and the scammers. And there is very clear evidence that from May 2022 and thereafter – Mr C was very concerned that he was being scammed. There are numerous comments that he thought he might be involved in a fraudulent scheme.

I counted more than 40 occasions in the chats – between May 2022 and November 2022 - where Mr C was concerned at various stages about: that he might be involved in a scam; that he wasn't going to make any more payments; that he didn't want to go on; that he wanted to pull out of the scheme; that he had lost trust in the scammers; and that he was 'being robbed'.

But each time, he was persuaded to go ahead with more payments. He believed what he was being told – for example, that tax was payable and that HMRC were holding onto his money.

So, for me it is not clear why he continued to make the payments – despite his very clear concerns (and those of the bank). But, given that he went ahead despite those concerns and warnings, he was clearly under the spell of the scammers. And therefore, I'm persuaded that any other interventions by the bank - before or after 9 November 2022 - would not have stopped the payments being made. So, I don't consider it is fair and reasonable to ask Santander to refund any money.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Santander took the necessary steps in contacting the firm that received the funds – in an effort to recover the lost money.

And here, (although I haven't seen the evidence of transfers from firm A to the scammers) we are told the funds went from the bank account to firm A and then to the scammers. In this case, as the funds had already been forwarded on in the form of cryptocurrency there wasn't likely to be anything to recover.

I'm sorry Mr C has had to contact us in these circumstances. I accept he's been the victim of a cruel scam, but I can't reasonably hold Santander responsible for his loss.

So, based on the evidence I've reviewed, I do not intend to uphold this complaint.

Responses to the provisional decision:

Santander made no further comment. But Mr C did. Through his representatives, he said:

- Mr C visited the branch of Santander following his call on 9 November 2022.
- Mr C doesn't recall what the conversation was in the branch, but it is clear that the bank's intervention wasn't effective as he then went on to make further payments following the visit.
- So, he says Santander should've provided better warnings at that time and blocked his account – this would've stopped the further payments being made.

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.

I considered the points Mr C made and reviewed his complaint and the evidence again.

His argument is that as Santander suspected there was a scam going on – on the call on 9 November 2022, then his account should've been blocked and the payments after that date not made.

But in fact, that's what happened – his account was blocked and he was asked to visit a branch, which he did. Santander haven't a record of what was said but equally, Mr C has no recollection either.

So, I must make a decision based on what, on the balance of probabilities, was discussed and agreed. And I think that Mr D must have given some assurances that he wanted to go ahead with the further payments. And the bank then unblocked his account.

I say that as he had made many payments before 9 November 2022 - despite the many misgivings he had previously – as was set out in the provisional decision. As that said, I counted more than 40 occasions in the chats – between May 2022 and November 2022 - where Mr C was concerned at various stages that he might be involved in a scam. But he still went ahead. So, he must have been convinced that the scheme was a genuine one – because he continued to make payments after he was told by the bank there was a scam going on.

It's my role to make a decision based on the balance of evidence I've seen, and I remain of the view that as Mr C went ahead despite the intervention of Santander – I don't think it's reasonable to make a decision which asks Santander to refund any money to Mr C, based on the circumstances of this case.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 April 2025.

Martin Lord
Ombudsman