

The complaint

Mr K complains that Santander UK Plc won't refund him money he lost in a series of transactions he made as a result of an investment scam.

Mr K is being represented by a professional representative but I'll refer to Mr K only, for ease of reading.

What happened

The circumstances surrounding this complaint are well known to both parties, so I've provided a summary of what I consider to be the key points.

Mr K says he had seen various adverts and articles about cryptocurrency and the potential for profit, so he decided to invest in Spring 2022. It appears he had responded to an unsolicited email and registered on the website of a company that claimed it could help people to invest and trade.

He says he made an initial payment to his own account with an Electronic Money Institution (EMI) on 25 April 2022 for £201 using his debit card (although Santander's records indicate it was a faster payment). Santander contacted Mr K and asked the purpose of this transaction and he answered that he was buying goods and was collecting them in person, rather than answering accurately that he was making the payment for investment purposes.

At this point it seems Mr K hadn't passed any money to the scammers. He asked to see something to prove this was a legitimate investment, by email on 10 May 2022 and was told to search for the company on the internet. It seems whatever research Mr K undertook at this point persuaded him it was safe to invest.

Mr K proceeded to make a number of payments from his Santander account to the digital wallet he had set up with an EMI and from there he made payments to cryptocurrency providers, before sending payments to a wallet controlled by the scammers.

Mr K made the following payments:

Date	Amount	Payment type and destination
25/04/2022	£201	Faster Payment to own digital wallet
10/05/2022	£209.14	Debit card payment to own cryptocurrency account
09/06/2022	£8,000	Faster Payment to own digital wallet
13/06/2022	£12,500	Faster Payment to own digital wallet
23/06/2022	£7,000	Faster Payment to own digital wallet
30/06/2022	£1,000	Faster Payment to own digital wallet
08/07/2022	£8,000	Faster Payment to own digital wallet
09/08/2022	£8,000	Faster Payment to own digital wallet
15/09/2022	£5,000	Faster payment to own cryptocurrency account

On 17 June 2022 Mr K contacted the financial regulator in an overseas country, having noted that the company he was dealing with said it was regulated there. He asked the

regulator to confirm whether the investment company was in fact regulated there. He received a reply from the regulator on 20 June 2022, giving him a response to his queries including links he could use to search whether the company was regulated. I understand the company he was dealing with was not listed as being regulated by that financial regulator.

On 2 and 17 July 2022 Mr K attempted to make a withdrawal from his account with the scammers, but neither withdrawal appears to have been successful.

Mr K contacted Action Fraud and Santander to report this as a scam around 17 August 2022 and replied to the overseas regulator on 19 August 2022, noting that the scam company was not listed as being regulated by them and said it looked like he'd been scammed.

Mr K had been attempting to make a withdrawal for some time and sent an email to the scammers on 12 September 2022, saying that he thought the investment was a scam. He referred to emails he had received asking for further money, purporting to be from the Financial Conduct Authority, which he noted were sent from an incorrect email address. He had also sent an email to the scammers on 1 September 2022 asking detailed questions.

Mr K appears to have made a final payment to the scammers on 15 September 2022.

Mr K says he didn't realise he was dealing with fraudsters and took reasonable precautions to ensure he wasn't being scammed. Santander failed to identify him as a vulnerable customer who might be susceptible to scams and didn't look out for payments which might indicate he was at risk of financial harm.

Our investigator said Santander should have intervened on 9 June 2022, mainly due to the size of the transaction. She said she would have expected a tailored written warning at this point but didn't think it would have deterred Mr K from making the payment. She also considered a human intervention on the £12,500 payment should have taken place, but this time she thought it would have made a difference. She considered that such an intervention would have likely caused Mr K not to make further transactions. She considered whether Mr K ought to bear some responsibility for his losses, but she thought he had acted reasonably when dealing with the scammers and Santander.

Santander says Mr K authorised the transactions to other accounts held in his own name and so the Contingent Reimbursement Model (CRM) code doesn't apply to the transactions. The funds were moved to his cryptocurrency account from a digital wallet held with another regulated business. It feels that it isn't responsible because Mr K's money wasn't lost from his Santander account and remained under his control after Santander processed the transactions. Mr K indicated that he was aware Santander wasn't allowing payments to cryptocurrency providers to be made from accounts held with it and he wasn't honest when it sent him dynamic warnings questioning the purpose of payments, so it questions whether he would have been honest if it had intervened further. It says it is necessary for Santander to balance the risk when considering what own account transfer fraud detection strategies to have in place. Neither the legal or regulatory framework, nor existing industry practice supports the conclusion Santander has any responsibility for Mr K's loss. It disagrees that Mr K shouldn't bear any responsibility for his losses. He received unsolicited contact, doesn't appear to have carried out due diligence and he selected the wrong payment reasons for the transfers. Santander also considers the interest suggested by the investigator is not appropriate and out of step with the recent approach of the County Courts. It says Mr K appears to have had control of the digital wallet his funds were transferred to and was able to withdraw money from it.

I issued a provisional decision on this complaint on 6 March 2025. In it, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've seen evidence which suggests to me that Mr K was indeed a victim of a scam. This is in the form of copies of emails and messages passed between Mr K and the scammers. I've also seen statements from Mr K's cryptocurrency accounts and the scam trading account, which show deposits corresponding to the payments made from his Santander account, with the exception of the final payment. The final payment appears to have been paid away to the scammers directly from one of his cryptocurrency accounts, to pay 'fees' rather than to invest. It also appears £1,252 was sent back to Mr K's Santander account from his wallet held with his EMI, on 22 July 2022.

Overall, I am satisfied the evidence suggests the scam took place broadly as Mr K describes and that he has lost the money he has claimed in this scam.

There is no dispute that Mr K authorised the payments. I appreciate he didn't intend his money to go to scammers. Under the Payment Services Regulations 2017, he is liable for the loss in the first instance. But the matter doesn't end there.

In this case, the CRM code doesn't apply because the transactions were between accounts held by Mr K and it also doesn't apply to debit card payments. However, taking into account the law, regulatory 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 made 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.*

In the circumstances of this complaint, I don't think Santander ought to have intervened on the first two transactions. Both were for a small amount, the transactions were made over two weeks apart and whilst they were to a new payee, the transactions weren't particularly out of character.

In any event, Santander did intervene on the first transaction. It sent a warning, asking Mr K some questions about the payment. Mr K's answers weren't accurate. He said he was paying for goods and was collecting them in person and I don't think anything in Mr K's responses ought to have caused Santander any particular concern at that point.

Mr K made an £8,000 payment to the same payee on 9 June 2022. Whilst he had made payments of several thousand pounds before, this was a large payment to a provider of a range of financial services, often used for making cryptocurrency transactions, and this was not typical of the previous account usage. It was also a considerable increase on the previous amount paid to this payee. I'm aware a large deposit was received into Mr K's Santander account shortly before the transaction, so it might be anticipated that this was to

facilitate some large transactions, but overall, I consider that Santander ought reasonably to have identified this £8,000 payment as a fraud risk and intervened.

I consider Santander ought reasonably to have provided a tailored written warning covering the scam risks, at this point. I'm not persuaded it's more likely than not that such a warning would have prevented Mr K's losses though. Mr K seems to have carried out some research and questioned the scammer initially, which might suggest he would have been receptive to such a warning. But he also appears to have answered Santander's earlier questions inaccurately, in response to the dynamic warning on 25 April 2022, which suggests the opposite and that he was attempting to disguise the purpose of payments from Santander. And he made payments later on, even when he had much firmer grounds for thinking he might be the victim of a scam, as I will explore later. On balance, I'm not persuaded it's more likely than not Mr K would have heeded this warning.

I consider the payment of £12,500 on 13 June 2022 ought to have triggered a greater level of intervention. This was the second large payment to the same payee, occurring within a few days of the previous payment and following a pattern of escalating payments. The combined value of payments was also quite large by this point, at over £20,000. In the circumstances, I consider Santander should have intervened in person.

Probing questions, would, in my view, likely have uncovered the scam at this point. Had Mr K been asked about the purpose of the transaction, I don't consider it likely that saying the payment was for a purchase of goods, for example, would have stood up to scrutiny, given the frequency and size of transactions to this payee. Also, Santander would have known that the EMI was commonly used for funding a cryptocurrency platform which several banks had placed restrictions on by that point.

It also seems Mr K might have started to have concerns of his own around this point. I say this because by 17 June 2022, four days later, he had contacted the overseas financial regulator to further investigate the legitimacy of the investment company he was dealing with. I consider questions about whether he had been able to make withdrawals, whether he had access to the account or whether others controlled his investments, about being approached on social media, together would have likely resonated with him.

Given all that, its most likely the real purpose of the payment would've been uncovered - that being Mr K was making these payments to invest in cryptocurrency. At which point, appropriate warnings around the risks of cryptocurrency and probing questions would most likely uncovered he was being scammed. This is because Mr K's circumstances were very similar to common features of cryptocurrency scams that Santander ought to have been aware of at the time – for example:

- an 'account manager', 'broker' or 'trader' acting on their behalf*
- a small initial deposit which quickly increases in value*

And so, while Mr K might not have been accurate about the purpose of the £201 payment, appropriate questioning regarding the £12,500 payment would, in my view, likely have uncovered these common features - thereby putting Santander on notice Mr K was likely falling victim to a scam. On that basis, I consider if Santander had intervened at the time of the £12,500 transaction on 13 June 2022, Mr K's further losses would have been prevented.

Is it fair to hold Santander responsible for Mr K's loss?

Santander mentions that the transfers to the scammers took place from other accounts within Mr K's control and it isn't aware whether Mr K has complained to those businesses,

which it notes are also regulated by the Financial Conduct Authority (FCA). Santander says it is at least one step removed from Mr K's loss. It considers the payment service provider from which Mr K's money was sent on to the fraudster, was in the best position and had the most information, to be able to intervene. This is consciously reflected in industry practice and in the CRM code. It considers any consideration of whether a bank has met standards of industry practice must acknowledge that own account transfers have always fallen outside the scope of the CRM.

In reaching my decision about what is fair and reasonable, I have taken into account that Mr K made these payments to accounts he held with other regulated businesses, before transferring them on to the fraudsters. He appears to have been in control of his money after he made the payments from Santander and it took further steps before the money was transferred to the fraudsters' control.

I have carefully considered Santander's suggestion that other regulated businesses were in a better position to intervene and prevent the fraud than Santander was and its comments about industry practice, the CRM code amongst other things.

In reaching my decision, I have taken into account that the payments were made to other financial businesses, EMLs and cryptocurrency trading platforms, in Mr K's name and that the payments to the scammers were made from those businesses.

But for the reasons set out above, I consider that Santander still should have recognised that Mr K might have been falling victim to a scam and should have intervened on 13 June 2022. If it had taken that step and asked Mr K probing questions, I'm satisfied it would have uncovered the scam and been able to prevent Mr K from suffering further losses. The fact that Mr K's money wasn't lost at the point it was transferred from Santander doesn't alter my view that Santander ought to have intervened and that its intervention would have prevented Mr K's further losses. I consider I can fairly hold Santander responsible for Mr K's losses in those circumstances.

Should Mr K bear some responsibility for his loss?

However, unlike the investigator, I do consider Mr K ought to bear some responsibility for his loss. Mr K seems to have had at least some awareness of the possibility this was a scam from 17 June 2022 at the latest. This is when he contacted the overseas regulator to make further enquiries. His suspicions ought reasonably to have been heightened from 20 June 2022 onwards, when he received a response from the overseas regulator, which indicated the investment company he'd been dealing with was not regulated by them. Yet he made several payments after this, including payments when he was already struggling to withdraw money from the investment and one payment after he had reported the scam to Santander. It's likely the realisation this was a scam came gradually and he may not have read the regulator's reply as soon as he received it, but I don't find all of Mr K's actions were reasonable in the circumstances.

I have considered whether these actions suggest Mr K would have continued with the transactions despite any interventions Santander might have made. But I've concluded that human intervention from Santander on 13 June 2022, coupled with Mr K's own doubts, which the evidence suggests were starting around this time, would have likely made a difference and prompted Mr K to act sooner than he did. I say this because Mr K contacted the foreign regulator within a few days of the £12,500 transaction, which suggests he had doubts around this time, so I consider it's likely he would've been receptive to a clear warning from Santander telling him he was very likely falling victim to a scam and advising not to send any further payments.

Overall, I consider Mr K should bear 50% of the losses on the transactions from the 23 June 2022 onwards. I'm persuaded this is fair and reasonable in all the circumstances, and recognises Santander could and should have done more to intervene and that would have likely prevented further losses, but also takes account of Mr K continuing to make payments even when he had suspicions about the scammers and had good grounds to suspect he might be the victim of fraud.

Putting things right

For the reasons given above, I consider if Santander had done what I consider it should, the transactions from 13 June 2022 would most likely have been prevented. I consider it should refund the transaction made on 13 June 2022 in full.

I consider Mr K ought to bear responsibility for 50% of his loss for the transactions that took place on or after 23 June 2022, with the calculation of redress taking into account the £1,252 that was transferred back to Mr K from his EMI wallet on 22 July 2022.

Interest should be added to this amount, at the rate of 8% simple per year, from the date of each transaction up to the date of payment.

I note Santander has said it doesn't think 8% is a fair rate of interest to apply. Santander says there isn't an obvious route for a use of Mr K's money that would have enabled him to obtain 8% interest elsewhere. That rate doesn't reflect available interest rates at the time and Santander says is out of step with rates used by the County Court in small claims cases. It says this rate of interest gives Mr K a windfall that it considers isn't fair or reasonable.

Mr K's loss is a continuing one and the rates of interest that were available on deposits at the time of the fraud are only part of the picture. Interest rates have changed considerably since the fraud took place, with the Bank of England base rate increasing from 0.75% to 5.25%, before reducing to 4.5%. A brief look at available savings rates on bank deposits on today's date suggests rates of return of 5% to 8% are not unrealistic. It is also important to recognise that Mr K has lost the use of this money for a considerable period of time, he may have had to borrow money in that period, use his credit card on occasion (which is likely to have attracted a far higher rate of interest) or delayed purchases altogether.

Overall, I consider 8% simple per year is a fair and reasonable rate of interest to apply, taking into account rates of return available across the whole period since June 2022 and also taking into account the loss of use of his money and loss of amenity Mr K is likely to have suffered."

I gave both parties until 20 March 2025 to respond to my provisional decision and make any further submissions for me to consider.

Mr K responded to my provisional decision to indicate that he accepted it.

Santander responded to my provisional decision on 20 March 2025, suggesting it was still considering my provisional decision and it would look to respond early the following week. It requested that I didn't issue a final decision until then. Our investigator replied to Santander to say she had moved the deadline for responses to 27 March 2025, but I haven't heard anything further from Santander.

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.

Neither Mr K nor Santander have made any further substantive submissions following my provisional decision. Mr K said he accepted my provisional decision, whilst Santander has not made any further submissions, despite being given the opportunity to and being given additional time in which to do so.

Having considered all the available evidence and arguments again, I have come to the same overall conclusion and for the same reasons set out in my provisional decision.

I acknowledge that this was a fraud with multiple stages and that Mr K's money was transferred to the scammers from another account under his control, not from his Santander account. But I remain of the view Santander was in a position to prevent some of Mr K's losses if it had intervened, for the reasons set out in my provisional decision.

I remain of the view that Santander ought to have intervened on 13 June 2022, to challenge the £12,500 payment, given my comments about good industry practice at the time, which I consider included, in some circumstances, making additional checks to prevent fraud. I consider additional checks should have taken place on 13 June 2022 for a variety of reasons including the size of the payment and the pattern of escalating payments, amongst other things.

While it is finely balanced, I consider intervention at that point is likely to have caused Mr K sufficient concern to have caused him to stop making payments to the scammers for the reasons given in my provisional decision. I acknowledge that there are some factors that might suggest otherwise. For example, Mr K was not open with Santander about the purpose of another transaction earlier in this series of payments, and he made later payments to the scammers even when he appears to have had some concern that he might have been scammed. But, as stated in my provisional decision, he does appear to have started to have concerns he was being scammed around this time because within days of the 13 June 2022 transaction, he had approached an overseas regulator to investigate the legitimacy of the company he thought he was investing with. I consider it likely these concerns would have grown in the days leading up to him contacting the regulator. It seems less likely he simply realised there might be a problem on 17 June 2022 and there was no obvious prompt that took place that day. So, I consider it likely that realisation was gradual but he is likely to have some concern on 13 June 2022. On balance, I consider intervention would have been effective at that point.

As explained in my provisional decision, I do consider it is fair and reasonable to conclude that Mr K ought to bear some responsibility for his loss. Whilst I recognise he has been the victim of a cruel scam, I consider as his realisation that he might be being scammed grew, he could have prevented some of his losses. I consider the point at which his concerns were sufficient that he contacted the overseas regulator to make further enquiries about the investment company, is a reasonable point at which to conclude he ought to bear some responsibility for his losses.

Overall, I am satisfied this outcome is fair and reasonable in all the circumstances.

Putting things right

Santander must refund the transaction made on 13 June 2022 in full.

Santander must refund 50% of the value of the transactions that took place on or after 23 June 2022, with the calculation of redress taking into account the £1,252 that was transferred back to Mr K from his EMI wallet on 22 July 2022.

Interest should be added to each of the refunds, at the rate of 8% simple per year, from the date of each transaction up to the date of payment.

If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell how Mr K much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above and in my provisional decision, I uphold Mr K's complaint and I require Santander UK plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 April 2025.

Greg Barham
Ombudsman