

## The complaint

Mr H complains that Santander UK Plc won't refund the money he lost as the result of a scam.

Mr H has been represented in this complaint by a claims management company.

## What happened

The background to this complaint is familiar to the parties, so I'll simply summarise it here.

Briefly, Mr H saw an advert on social media for an investment company (which I'll refer to as "K"). Mr H expressed his interest and a broker from K contacted him and told him about the potential for significant returns on investments. Unfortunately, K ultimately turned out to be a scammer.

Mr H set up an account on K's investment platform. With K's help, using remote access software, he also set up an account with a trading company, which I'll refer to as "A". Acting on K's advice, Mr H bought cryptocurrency, which K then transferred to its own account. Mr H was able to view what appeared to be his investments on K's fake investment platform.

In early days of the scam, Mr H was sent £200 back by K, who told him that the more he invested, the greater his profits would be. Reassured by having been able to make a withdrawal, and attracted by the potential returns, he took out loans to enable him to invest more. But eventually, when he requested larger withdrawals, K refused and cut all contact with Mr H. It was at that point that he realised he'd fallen victim to a scam.

In all, Mr H made four payments to the scam. The dates shown are those on Mr H's statement.

|              | <b>Date</b>      | <b>Merchant</b> | <b>Amount</b>     |
|--------------|------------------|-----------------|-------------------|
| 1            | 5 February 2019  | Debit card to S | £192.44           |
| 2            | 11 February 2019 | Debit card to M | £1,150.81         |
| 3            | 23 February 2019 | Debit card to A | £4,700.43         |
| 4            | 6 March 2019     | Debit card to A | £14,636.88        |
| <b>Total</b> |                  |                 | <b>£20,680.56</b> |

All four payments were converted into euro and Mr H was charged a non-sterling transaction fee and a foreign currency purchase fee each time.

Mr H complained to Santander that it hadn't done enough to protect him from losing his money to a scam. But Santander said it wouldn't refund the money, citing the fact that Mr H authorised the payments, had a financial relationship with the merchant and had full access

to the account. Unhappy with Santander's response, Mr H brought his complaint to this service.

Mr H's representatives believe that Santander should have intervened and asked Mr H probing questions about payment 3, on the basis that it was out of character.

One of our investigators considered the complaint and thought it should be upheld in part. In summary, he thought that the account activity was so unusual for Mr H that Santander should have been concerned about the final two payments and should have contacted Mr H and asked him about them. And the investigator thought that if it had done so, the scam would have been uncovered, and Mr H wouldn't have made the last two payments. But he thought that Mr H should share some of the responsibility for his loss, as he'd missed some red flags that the investment might not be legitimate. So the investigator said Santander should pay Mr H 50% of the last two payments and associated fees, with interest on the refund.

Mr H accepted the investigator's view. But in spite of being given extra time to respond, Santander didn't do so. So the complaint's been passed to me for 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.

I was sorry to hear that Mr H fell victim to a cruel scam and lost a significant amount of money. I don't underestimate the impact this is bound to have had on him. My role is to decide whether it's fair to hold Santander responsible for all or any of his loss.

It's common ground that the payments were 'authorised'. Mr H made them using his debit card. So even though he didn't intend the money to end up with a fraudster, the payments were 'authorised' under the Payment Services Regulations. Santander had an obligation to follow the payment instructions it received, and Mr H is presumed liable for his loss in the first instance. But that's not the end of the story.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations, regulators' rules, guidance, standards and codes of practice and, where appropriate, what I consider to have been good industry practice at the time. Taking those things into account, I think that at the time the payments were made, Santander should have been doing the following to help protect its customers from the possibility of financial harm:

- monitoring accounts and payments to counter various risks, including fraud and scams;
- keeping 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) – especially given the increase in sophisticated fraud and scams in recent years, with which financial institutions are generally more familiar than the average customer;
- in some circumstances, regardless of the payment method used, taking additional steps, or making additional checks, before processing a payment, or, where appropriate, declining to make a payment altogether; and

- being mindful of - among other things - common scam scenarios, how fraudulent practices were evolving (including, for example, the use of multi-stage fraud by scammers) and the different risks these can present to consumers when deciding whether to intervene.

I acknowledge that Mr H's loss didn't arise directly from the payments he made from his account with Santander. The loss occurred at a later stage. But even so, there are circumstances in which I'd consider that Santander should have taken a closer look at the payments. Ultimately, I need to decide whether the payments were concerning enough that it would have been reasonable to expect Santander to have a closer look at the circumstances surrounding them.

However, I also need to bear in mind that banks process high volumes of transactions every day, and I consider that there's a balance to be struck. Banks have obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction. And I think it was reasonable of Santander to consider a range of factors when deciding whether to take any additional steps before making the payments.

Our investigator didn't consider that the first two payments were sufficiently unusual for Mr H that Santander ought to have intervened. Mr H accepted the investigator's view. So I won't discuss the first two payments in detail here, other than to say that I agree that it wouldn't be fair to say that Santander could reasonably have been expected to intervene before processing them. This is, in brief, because I don't think there were enough warning signs that Mr H was at risk of financial harm from fraud when he made those payments.

I've looked at Mr H's statements for his account with Santander for the six months immediately before he made the payments to the scam. He generally used the account for day-to-day spending and bill payments. The largest payment by some way was a monthly direct debit of around £660 to a building society, which appears likely to have been for Mr H's mortgage. Most other payments were under £100.

I think it's fair to say that Payments 3 and 4 marked a very significant departure from Mr H's spending. What's more, both were preceded by substantial loans for similar amounts to the two payments. And both payments were made in euros, and were to an overseas recipient which provided cryptocurrency.

I accept that Santander may have considered that Mr H was sending payments to a legitimate trader. And I also acknowledge that there don't appear to have been any active warnings about A when Mr H made the payments. But the FCA and Action Fraud had both published warnings about cryptocurrency scams in mid-2018, and Santander, as a regulated business, ought to have been aware of those. In the light of those warnings and the information that was known to banks at the time concerning the increase in cryptocurrency scams, I think Santander should have contacted Mr H about payment 3, and should have asked him some probing questions.

Of course, I can't be sure what would have happened if Santander had spoken to Mr H, as I think it should have done. But in cases where the evidence is incomplete or inconclusive, I make my decision based on the balance of probabilities – in other words what I think is more likely than not would have happened, based on the available evidence.

Mr H has told us that the scammer hadn't given him any pointers about what to say if his bank asked him about the payments, and there's no such coaching apparent in the messages between Mr H and the scammer. As far as Mr H knew, he was taking advantage of a legitimate investment opportunity, and would have had no reason to deceive Santander about how it had come about or what had been involved.

Overall, I think that if Santander had asked Mr H what the payment was for, and about the basic surrounding context, it's likely, on balance, that Mr H would have explained what he was doing, and that it was on the advice of K. And I think he'd likely have shared information which aligned with the hallmarks of this type of scam, as he'd been given no reason to believe that he ought to conceal the information from his bank.

Taking everything into account, I think it more likely than not that if Santander had asked Mr H the sort of questions I think it should have done, it would have become apparent to both Santander and Mr H that he'd sadly fallen victim to a scam, and he wouldn't have made any further payments.

As it was, the evidence, including Mr H's WhatsApp chats with K and the screenshots he's provided of K's fake trading platform are enough to satisfy me, on balance, that the payments that he made from his Santander account to A correspond to apparent investments on K's fake trading platform, and that he lost payments 3 and 4 to the scam.

*Should Mr H bear some of the responsibility for his loss?*

I've considered whether Mr H should bear some responsibility for his loss, due to contributory negligence on his part. Mr H's representatives told us that he accepted the investigator's view, in which a 50% deduction for contributory negligence was recommended. Given that Mr H accepted this, I won't consider it at length here. But having thought carefully about all the circumstances surrounding Mr H's payments to the scam, I agree with the investigator that Mr H missed some warning signs.

Briefly, I think it might reasonably have occurred to Mr H that the potential returns referred to by K were too good to be true. He allowed K access to his computer, and allowed it to open and operate accounts in his name. What's more, the overall tone of K's messages to Mr H was frequently highly unprofessional, and not such as would reasonably have been expected from a legitimate investment company.

Taking everything into account, I don't think it would be fair to hold Santander responsible for the whole of Mr H's loss on payments 3 and 4. Instead, like the investigator, I consider that a fair solution is to require Santander to share responsibility for those payments equally with Mr H.

*Could Santander have done more to recover Mr H's money?*

Mr H made the payments to A by debit card. A scheme called chargeback deals with disputes between card issuers (such as Santander) and merchants (A, in this case).

Chargeback isn't an automatic right, and banks don't have to raise a claim where there isn't a reasonable prospect of success. In this case, Mr H made the payments to an account in his own name with a legitimate cryptocurrency provider. The money was used to buy legitimate cryptocurrency. So he essentially got what he paid for, and I can't see that a chargeback claim would have had any realistic prospect of succeeding. Nor can I see any other way in which Santander might have recovered Mr H's money.

## **Putting things right**

To put things right, Santander should:

- Refund £9,668.66 to Mr H, being 50% of payments 3 and 4;
- Refund £267.13, being half the non-sterling transaction fees and foreign currency purchase fees Mr H was charged on payments 3 and 4; and
- Pay Mr H simple interest at 8% per year on the above refunds from the dates the payments were made until the date the money is refunded.

If Santander deducts tax from the interest, it should give Mr H a tax deduction certificate, so that he can reclaim the tax from HMRC if appropriate.

## **My final decision**

My decision is that I uphold this complaint in part. I require Santander UK Plc to put things right by doing as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 September 2025.

Juliet Collins

**Ombudsman**