DRN-4046165

The complaint

Mr C complains that Santander UK Plc didn't do enough to protect him when he fell victim to a crypto investment scam.

What happened

In June 2021, Mr C came across an advert for a crypto investment broker (which I'll refer to as the "broker") on a social media platform, which purported to be endorsed by a well-known individual. Mr C was led to believe he could make high returns from his investment. He made an initial investment of £250 and was later persuaded to make further payments as he was advised he would get higher returns the more he invested.

With the exception of the first card payment, which was made to an unknown merchant, Mr C's payments were made to a legitimate crypto exchange. Once converted, the crypto was moved onto what Mr C believed was a trading account, but it was actually transferred into the control of the scammers. In total, Mr C made payments totalling £21,464.99 from his account with Santander.

Payment number	Date	Transaction type	Amount
1	23 June 2021	Debit card payment	£250
2	20 July 2021	Faster payment	£2,000
3	19 August 2021	Faster payment	£6,000
4	1 December 2021	Faster payment	£5,000
5	31 January 2022	Faster payment	£3,000
6	8 August 2022	Faster payment	£5,214.99
		Total	£21,464.99

Mr C reported seeing his investments performing well and he was able to make two withdrawals from the account - £10 on 26 June 2021 and £240 on 20 August 2021. Mr C initially intended to invest until December 2021, when he said he would need to make a withdrawal to cover a deposit to buy a new house but around that time trades started to fail, and Mr C started to make unexpected losses.

Mr C attempted to make a withdrawal from the investment in early January 2022, but he was unable to do so – initially he was told that certain trades needed to close before withdrawals could be made from his account, but Mr C noted in conversations with the broker that his instructions to close trades were not being followed. A later attempt to make a withdrawal was also unsuccessful when a new trade was inexplicably created on his account.

Mr C was later persuaded to make a further £3,000 investment on 31 January 2022, but he did so on the proviso he could withdraw £60,000 on 7 February 2022. In February 2022 Mr C notes that his investment was again losing money.

In August 2022 Mr C enquired about withdrawing funds from the account and was advised he had additional fees to pay which he paid on 8 August 2022. But having done so he was advised that he had provided the wrong wallet details and so his withdrawal had gone elsewhere and needed to be rectified with Blockchain. It was at this point Mr C realised he had been scammed and that his money had been lost.

In September 2022, Mr C complained to Santander, via a professional representative (who I'll refer to as "R"), that it had failed to flag the unusual payments from his account and warn him about potential scams. He complained that Santander had therefore failed to prevent his loss.

Santander said that as Mr C had never raised any concerns about his account activity it had not had the opportunity to consider them.

Mr C was unhappy with Santander's response and referred his complaint to the Financial Ombudsman with support from R. Our Investigator upheld the complaint. While he accepted that the first two payments would not have seemed unusual to Santander, given Mr C's past account history, he considered that Santander ought to have been concerned when Mr C made the third payment (£6,000) as this was significantly larger than any payments he had made in the past. He considered that Santander ought to have asked Mr C about his intended payment before processing his instruction, and had it done so, he considered that it would have come to light that Mr C was falling victim to a scam.

Our Investigator thought that had Santander intervened as it ought to have done, and provided Mr C with appropriate warnings, it was most likely that Mr C would have heeded Santander's warning and wouldn't have made any further payments to the investment, therefore limiting his loss. But our Investigator determined that Mr C should also bear some responsibility for his loss, as he'd failed to carry out due diligence prior to investing and had he done so he would most likely have discovered information that would have alerted him to the fact that the investment firm was most likely a scam.

R disagreed on Mr C's behalf as, while it accepted that negative information had been published online about the broker at the time Mr C made his payments, it argued these would not have been discoverable from a basic internet search at the time. It explained that articles published online take time to rise in Google's ranking, and so it was highly unlikely to be visible at the time Mr C was investing. As such, it would be unfair to say Mr C was responsible for his loss when he could not reasonably have discovered the negative information. It also claimed that Mr C had found positive online reviews which had reassured him the investment opportunity was legitimate.

The case was then passed to me to decide.

Before reaching a final decision, I reached out to both parties to set out my thoughts on the complaint. Having carefully considered the evidence and explanation provided by R, I accepted that it was more likely than not that Mr C would not have easily discovered the negative information about the broker had he conducted reasonable due diligence before investing. On that basis, I explained that while the failure to carry out proper due diligence may be evidence of a lack of care on Mr C's part, it was not enough to show that he could have prevented his own loss from the outset of the scam.

But I considered that Mr C could have prevented some of his later losses. I considered that by mid-December 2021 there was enough reason for Mr C to question what he was being told by the broker, and had he done so the scam could have been uncovered at that point.

I concluded that Santander should refund the payments made on 19 August and 1 December 2021 in full. It should also refund 50% of the payments made on 31 January and 8 August 2022. It should also add 8% interest per year (less any tax properly deductible), from the date each payment was made to the date of settlement.

Mr C agreed with my conclusions. Santander disagreed and raised some broader concerns about its liability to compensate Mr C for his loss. Santander noted that Mr C's losses did not take place from his Santander account. It said Mr C had transferred funds to an account in his own name held with another "regulated entity" (by which I assume it was referring to the crypto exchange) before it was transferred to accounts controlled by the fraudsters. It argued the "alternative regulated entity" should have been operating the same fraud detection and money laundering systems and controls to identify unusual payments or payment patterns and was in a better position to identify concerns over where payments were going to.

Despite this, Santander repeated its earlier offer to refund 50% of Mr C's loss from 19 August 2021 to 8 August 2022. It maintained that Mr C should be held jointly responsible for his entire loss. It noted that Mr C had found the investment opportunity online and had said he had conducted his own research. But it highlighted examples of negative press regarding the broker at the time Mr C made his initial investments. It also argued that Mr C ought to have been concerned that the broker had encouraged him to download and use remote access software, which it said should have been a red flag that the company was not a legitimate financial provider.

As there has been no agreement, it is now for me to reach 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'm upholding this complaint in part.

As Santander has agreed to refund 50% of Mr C's losses from the third payment onwards, plus 8% interest per year, it appears to accept that it could have done more to prevent Mr C's losses that arose from the crypto investment scam. As such, my decision will mostly focus on whether I consider Mr C contributed to his own loss, and if so from what point.

But before I address this, I wanted to address Santander's broader concerns about whether it should reasonably be held liable given Mr C's loss did not take place directly from his Santander account.

Should Santander be held liable for Mr C's loss?

It is disappointing to see that Santander has continued to raise these arguments, considering it has received a number of final decisions which clearly set out our position in relation to multi-stage scams such as the one Mr C fell victim to. But for the sake of completeness, I will address Santander's concerns here.

Santander should fairly and reasonably have been on the lookout for the possibility of APP fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.
The potential for multi-stage scams ought to have been well known to Santander by August 2021 and as a matter of good practice it should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams – particularly those involving payments to crypto exchanges.

I think it's important to note at this point that while the crypto exchange Mr C transferred funds to is registered with the Financial Conduct Authority (FCA) for anti-money laundering purposes, crypto isn't a regulated activity, so it is misleading for Santander to suggest it has the same obligations or expectations as Santander, which is a regulated bank.

I'm therefore satisfied that Santander should fairly and reasonably have made further enquiries before processing the £6,000 payment on 19 August 2021, as it was unusual for Mr C's normal account behaviour, and if it had, it is more likely than not that the scam would have been exposed and Mr C would not have lost any more money. If questioned, I think Mr C would have revealed that the investment opportunity had a number of hallmarks of the crypto investment scams that were prevalent at the time. For example, the fact that it had been promoted on social media and had supposedly been endorsed by a well-known individual, along with the fact that he was in contact with a broker or account manager who used remote access software to assist in the investment. I'm satisfied that had Santander become aware of this it would have realised it sounded like a scam. Had Santander then provided Mr C with an appropriate warning, proportionate with the risks identified, I'm satisfied that he would most likely not have proceeded with the payments as he would not have been prepared to take the risk that he would lose all his money.

In those circumstances I am satisfied it is fair to hold Santander responsible for Mr C's losses (subject to a deduction for contributory negligence on his part).

Should Mr C bear some responsibility for his loss?

I have thought carefully about whether Mr C should bear some responsibility for his loss by way of contributory negligence (which might justify a reduction in compensation). And I think he should. But only from the fifth payment on 31 January 2022.

When considering whether a consumer has contributed to their own loss, I must consider whether the consumer's actions showed a lack of care that goes beyond what we would expect from a reasonable person. I must also be satisfied that the lack of care directly contributed to the individual's losses.

Mr C has said he did carry out some research into the broker before investing and that he found some positive Trustpilot reviews. I have not seen any evidence of the research Mr C carried out, which is not in itself unusual as I wouldn't ordinarily expect a consumer to record their own research. But as Santander has highlighted it does mean it's impossible to know for certain what Mr C would, or should, have seen online. As such, I must reach a decision based on what I consider is most likely.

The Trustpilot reviews I have been able to find, following a recent search, are dated after Mr C's first payment. Although I appreciate that potentially fake reviews may have been available at the time Mr C made his initial payments which have since been removed. I say this because an online review of the broker mentions there having been *"lots of positive comments on Trustpilot.com".*

But in either event, without clear evidence from Mr C, it is unclear what if any due diligence he carried out before investing. But whether Mr C carried out some research or not, is not enough to say that he contributed to his loss. I would need to be satisfied that Mr C ought to have been able to reasonably find information that would have demonstrated that it was a scam, or at the very least seriously called into question what he was being told.

So, I've gone on to consider whether I think Mr C ought to have found and acted upon negative information that was published online. Santander has highlighted some negative reviews and commentary pieces that had been published about the broker in the days before Mr C made his first payment. But as I explained when I reached out to Santander informally, while this information was available, it does not necessarily follow that this would have come to light had Mr C carried out reasonable research into the broker before investing.

R has provided commentary to explain why these negative reviews would most likely not have appeared within search results had a basic Google search been carried out at the time. Having carefully considered what R has explained, as well as carrying out my own research into the matter, I have accepted that while information published on the internet is available immediately, it takes time for it to rank high enough that it is returned in a basic search engine result.

While I would expect a reasonable person to carry out basic due diligence before seeking to invest, I would not expect them to carry out a forensic online search. And as such, if I'm not persuaded the negative information was easily discoverable, which in this case I'm not, then I can't reasonably conclude Mr C could have prevented his loss at the time even if he had carried out reasonable due diligence. It's also relevant that there were no FCA or other regulatory warnings about the broker at the time Mr C started to invest.

I've also considered whether, as raised by Santander, Mr C should have been concerned that the broker had encouraged him to download remote access software. While I appreciate this is a hallmark of the type of investment scam Mr C fell victim to, and something that Santander should have been on the lookout for, I don't think it's reasonable to say that Mr C, as an inexperienced investor, ought to have realised that he was falling victim to a scam because of the use of remote access software.

So, having carefully considered all the available evidence, I don't think it would be fair to say Mr C contributed to his losses from the start.

But there came a point in the scam where I think a reasonable person would have had enough reason to question the legitimacy of what was going on that they would not have made additional payments towards the investment.

The messages between Mr C and the scammer show that Mr C initially intended to invest until December 2021, when he wanted to withdraw his funds to put towards a deposit for a new house. While his initial investments had performed well, around the time Mr C wanted to make a withdrawal his profits started to drop, and he was told that he could not make a withdrawal until certain trades closed. It's noted within these conversations that Mr C's instructions to close trades were also not being followed and new trades were inexplicably created against his wishes when he'd actually requested a withdrawal.

While Mr C had previously been able to make small withdrawals from the account, I think he ought to have been seriously concerned when his later efforts to withdraw his profits were unsuccessful. By mid-December 2021 there was also evidence that the "account manager" was not always following Mr C's instructions. I think it's also significant that Mr C noted on 4 January 2022 that he had discussed his financial situation with his mortgage adviser who *"wasn't very complimentary about* [his] *situation"* in reference to his crypto investments. At this stage, I think Mr C ought to have reasonably questioned what he was being told by the broker. While I appreciate Mr C remained in regular contact with the broker, and was therefore subject to their ongoing manipulation, I think there was also enough time and space for him to seek independent financial advice before making any further payments. Had he done so I think it would most likely have come to light that he was falling victim to a scam. So, I consider Mr C could reasonably have prevented his loss from that point.

I therefore require Santander to refund the payments made on 19 August and 1 December 2021 in full. It should also refund 50% of the payments made on 31 January and 8 August 2022. It should also add 8% interest per year (less any tax properly deductible), from the date each payment was made to the date of settlement.

I understand that our Investigator previously suggested that Santander pay the interest rate that applied to the originating account. But I consider 8% interest is more appropriate. Mr C has been deprived of the use of this money for over two years. Had the money been available to him its likely he would have used it in a variety of ways, including using it towards a house purchase. I think 8% simple interest is a fair interest rate in these circumstances.

Could Santander have done anything else to recover Mr C's money?

For completeness, I have also considered whether there was any prospect of Mr C's other losses to be recovered, but I don't think there was.

The initial payment was a debit card transaction. As such the only option for recovery would have been via a chargeback claim. There are strict time limits that apply when making a chargeback claim and as Mr C only notified Santander of his concerns in September 2022, I'm satisfied that a chargeback would not have been successful as it would have been raised out of time.

As the remaining funds, transferred between 20 July 2021 and 8 August 2022, went to an account in Mr C's name before being converted into crypto and sent to fraudsters, I'm satisfied it could not have been recovered by Santander.

My final decision

I uphold this complaint in part and instruct Santander UK Plc to pay Mr C:

- 100% of the payments made on 19 August and 1 December 2021 – a total of £11,000, plus
- 50% of the payments made on 31 January and 8 August 2022 – a total of £4,107.50, plus
- 8% simple interest per year on each payment from the date of each payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 March 2024.

Lisa De Noronha
Ombudsman