

The complaint

Mr H complains that Santander UK Plc hasn't refunded him after he fell victim to a cryptocurrency investment scam.

What happened

The background to this complaint is well-known to both parties and so I won't go into detail about what happened.

Mr H found what he believed to be a legitimate cryptocurrency investment broker online. But he'd in fact come across a scammer, posing as a legitimate party. He was persuaded to invest, believing he'd make substantial returns.

Over the course of a month Mr H made a total of five payments toward the scam. Money was sent from Mr H's Santander account to a cryptocurrency wallet in his name. He sent it on from there at the scammer's instruction.

Santander intervened in one of those payments, when Mr H gave an instruction to send £16,800 to his cryptocurrency wallet. It asked him some questions about the purpose of the payment and it was released.

He did receive some money back over that period. His total loss stands at £34,614.

When Mr H realised he'd been scammed he contacted Santander for help. But it said it wouldn't refund him, and so he referred a complaint to our service.

One of our investigators considered the complaint and recommended it be upheld in part. She said Santander was right to intervene and question the payment of £16,800. But she didn't believe the bank's questioning was sufficient in the circumstances. She said it didn't do enough to identify the evident scam risks, didn't provide suitable warnings to Mr H, and could have mitigated Mr H's losses had it done so. In light of that she found Santander ought to bear some responsibility for Mr H's losses from that point on.

She also recognised that Mr H ought to bear some responsibility for the loss, even from the point at which Santander intervened. She said Mr H hadn't acted reasonably as he'd not done enough to check he was pursuing a legitimate investment opportunity. She said there were signs that all was not as it seemed, and those signs ought to have prompted a greater degree of caution on Mr H's part. So she said each party should bear responsibility for half of the losses from the point Santander intervened.

Mr H accepted the outcome. Santander didn't, stating it shouldn't be responsible for Mr H's losses given he sent money to an account in his name and which he had control of. It felt the firm that held the account ought to be the one held accountable. And it said its principal duty was to execute a customer's payment instruction without questioning the wisdom or risks of their decision.

As an agreement hasn't been reached the complaint has been passed to me for 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.

I'm upholding Mr H's complaint and for broadly the same reasons as our investigator.

The starting point at law is that Mr H is responsible for all payments made from his account which are properly authorised. This position is set out in the Payment Service Regulations (2017) and is confirmed in Mr H's account terms and conditions. That remains true even where a customer has been the victim of a scam and has authorised payments under false pretences.

However, taking account of long-standing best practice and industry guidance, alongside Santander's own terms and conditions, I'm satisfied the bank ought, fairly and reasonably, to have been on the lookout for fraud and scams, with a view to preventing its customers suffering financial harm. That includes multi-stage fraud, where funds might be sent to another account in the customer's name before being lost.

Santander should fairly and reasonably be aware of this particular type of fraud involving cryptocurrency scams. Along with its own experience, as a professional banker, the FCA has issued warnings and guidance about such scams. I'm satisfied Santander ought to have been monitoring Mr H's account for this type of scam and that his losses, even from an externally held cryptocurrency wallet, were foreseeable and preventable.

Santander has put forward the argument that it is not for it to question the payment instructions of its customers. I've already set out above why I'm not persuaded that is the case. But its own actions, when we examine the facts of the case, set that out as not being true. Santander does – as all firms in practice do – monitor accounts for this type of scam and will intervene when a payment presents as an APP scam risk. It stepped in to question the payment of £16,800 Mr H was trying to make. And it went on to ask some questions relevant to scam prevention.

The error made here is that the questioning of Mr H didn't go far enough. He had openly stated he was purchasing cryptocurrency. There followed a couple of questions relevant to the type of scam. But they were closed questions, requiring only yes or no answers. And Santander didn't probe into how the investment had been discovered, what returns were being promised/received, or anything else that would more likely than not have revealed concerning details of the scam.

Santander also, fairly and reasonably, ought to have given Mr H warnings about cryptocurrency scams, explaining the common features, and bringing the details to life so Mr H might reflect on his situation and recognise the warning signs.

As Santander failed to do what I consider would have been fair and reasonable in the circumstances it's right that it ought to bear responsibility for some of Mr H's losses.

Mr H has accepted the outcome recommended by the investigator. This means there is no outstanding dispute about where Santander ought to have stepped in and I consider the £16,800 point to be a reasonable one.

Mr H has also accepted his own actions must be taken into account and that, on reflection, they were not reasonable. As such there is no further dispute over the sharing of responsibility for the loss. So I'll not comment on that further.

Putting things right

On Mr H's acceptance Santander should:

- Refund 50% of Mr H's loss from the point he made the £16,800 payment (totaling £13,400);
- Pay interest on that sum at 8% simple per year, calculated from the date of loss to the date of settlement.

My final decision

I uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 March 2024.

Ben Murray
Ombudsman