

## **The complaint**

Mr O complains that Santander UK Plc did not refund all of the funds he lost as part of a scam.

## **What happened**

Mr O was introduced to an investment in cryptocurrency by a relatively new acquaintance. Santander has said he went on to invest £11,408.91 over the course of over five months. These were over 22 payments, ranging from £3.00 to £2,000. Some payments were made on the same day, but generally they were spread out over the five-month period.

When Mr O did not receive any returns and could not withdraw the funds from the investment, he realised he had been the victim of a scam. He raised a claim with Santander and they explained that they were unable to recover his funds from the recipient account, due to the way in which cryptocurrency works. They reviewed the complaint under the Contingent Reimbursement Model (“CRM”) code and awarded Mr O a 50% refund of the transactions, totalling £5,704.96 which has already been paid to him.

Mr O referred the complaint to our service as he felt he should receive a full refund. Along with their file, Santander explained that upon a second review, the complaint should not be considered under the CRM code as the payments went to another account in Mr O’s name, so they did not fall under the remit of the code. With this in mind, they did not agree they were liable at all for the payments.

Our Investigator looked into the complaint and felt that Santander had not made an error in the circumstances and that what they had done so far to resolve the complaint was fair. On balance, they thought Mr O could reasonably have done more to prevent the loss.

Mr O did not agree with the outcome, and Santander reiterated they were not liable for the loss in the first instance.

As an informal agreement could not be reached, the complaint has been passed to me for a 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.

On balance, I think Mr O has been the victim of a scam. While he did receive some returns into his Santander account, this is a typical feature of an investment scam in order to encourage the victim to continue making payments into the scam. Mr O was unable to withdraw all of his funds and I think he was deceived into sending them on to a wallet he had no control over.

As has already been set out, these transactions do not fall under the CRM code. However, I

still need to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr O authorised the payments in question, as he believed they were part of a legitimate investment. So, while I recognise that Mr O didn't intend the money to go to scammers, the starting position in law is that Santander was obliged to follow his instruction and process the payments. Because of this, Mr O is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Santander did enough to try to keep Mr O's account safe.

I've looked over Mr O's statements to see if the payments in question looked suspicious when compared to his genuine account activity. Having done so, I don't think the value or frequency of the payments when compared holistically with the genuine account activity were unusual enough to have warranted intervention from Santander prior to them being processed. The highest value payment was £2000 and the majority of them were £500 and under, so the amounts were not particularly unusual. As they were spread over five months, the frequency was not so significant that further checks should reasonably have been carried out. With this in mind, I don't agree Santander missed an opportunity to reveal the scam.

As the payments were sent to an account in Mr O's name, and were then used to purchase cryptocurrency, Santander was unable to recover the funds once they were made aware of the scam. So I don't think they acted unreasonably when they did not make attempts to recover the funds.

Santander has also raised the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25*. In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary that where a customer has authorised or instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions. Though the express terms of the current account contract may modify or alter that position.

For example, in *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.

In this case, Santander's December 2020 terms and conditions gave it rights (but not obligations) to refuse any payment instruction if it reasonably suspected it relates to fraud or any other criminal act, or delay payments while fraud prevention checks take place. So it had a contractual right to delay or refuse to make payments where it suspected fraud. However, as I explained above, I don't think that the payments in question in this case should reasonably have been flagged by Santander as suspicious and therefore potentially

fraudulent. So I think Santander acted reasonably when it carried out Mr O's instruction without refusing or delaying the payments in question.

I note Santander has already provided a partial refund of £5,704.96 and it has said it is not seeking a return of this. As I do not agree that Santander has missed an opportunity to reveal the scam, I don't direct them to make any further payments to Mr O.

**My final decision**

I do not uphold Mr O's complaint against Santander UK Plc.

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

Rebecca Norris  
**Ombudsman**