

The complaint

Mr and Mrs G have complained that Santander UK Plc (“Santander”) will not refund the money they lost as the result of a scam.

As Mr G was the person in contact with the scammer and he brought and led this complaint, I will mostly refer to him throughout this decision.

What happened

Both parties are familiar with the details of the scam, so I will provide only a summary here. Mr G noticed an advert for an investment company, that I will call B, that appeared to be endorsed by a well-known celebrity.

Mr G contacted B and subsequently sent funds to a crypto exchange. The funds were then exchanged into crypto which were sent onto B. The payments were made via faster payments and one credit card payment. The credit card payment was made directly to a company for a trading course.

Transaction Number	Date	Amount	Type of Payment
1	3 January 2023	£208.01	Credit Card
2	10 January 2023	£5,000	Faster Payment
3	16 January 2023	£265.51	Credit to account
4	14 February 2023	£6.05	Credit to account
5	21 March 2023	£4,000	Faster Payment
6	10 May 2023	£6,000	Faster Payment

Mr G tried to withdraw some of his “profits”. He says he was unable to do so and therefore he realised that he had been scammed. Mr G raised a fraud claim with Santander but it rejected his claim.

Our investigator upheld the complaint, in part because he thought that Santander should have intervened at transaction 2. They concluded that, had it done so, the scam would likely have been stopped. He therefore thought that all the transactions after this point should be refunded.

He did though decide that there should be a 50% reduction to the refund, as he thought that Mr G was equally responsible for his own loss.

Santander did not agree with this outcome and therefore this complaint was passed to me to issue 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.

There's no dispute that Mr G made and authorised the payments. Mr G knew that the payments were being made from his account, and the reason why. At the stage he was making these payments, he believed he was transferring funds to invest in crypto. I don't dispute Mr G was scammed and he wasn't making payments for the reason he thought he was, but I remain satisfied the transactions were authorised.

It's also accepted that Santander has an obligation to follow Mr G's instructions. So, in the first instance Mr G is presumed liable for his loss. But there are other factors that must be considered.

I've considered whether Santander should have done more to prevent Mr G from falling victim to the scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transaction. For example, if it was particularly out of character.

Based on everything that I have seen, I think Santander should be liable for payments 2 onwards. I'll explain why below.

I think Santander ought to have carried out further checks on payment 2 and contacted Mr G before processing this transaction. I say this because, it was a large payment to a crypto exchange. Mr G had held his account for a while and Santander should have recognised that Mr G was not in the habit of making payments to a crypto exchange, especially large ones. This combination of factors in this particular case was unusual enough that it really should have prompted an intervention from Santander at payment 2.

I also appreciate that Mr G's loss didn't materialise directly from his Santander account in these circumstances. But even though he was transferring funds to a crypto account in his own name, I still think that Santander ought to have taken a closer look at payment 2 – given the significant risk of fraud associated with cryptocurrency investments at the time.

The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. And by January 2019, cryptocurrency scams continued to increase in frequency. So, by the time Mr G started making his "investments" in 2023, it is reasonable to say Santander ought to have had a good enough understanding of how crypto scams works – including the fact that their customer often moves money to a crypto account in their own name first, before moving it on again to the scammers.

Therefore, I'm satisfied that Santander should've had mechanisms in place to detect and prevent this type of fraud at the time Mr G was making this payment. I also think it is the case that it should have led to Santander intervening to ask further questions about payment 2.

I would expect Santander to have intervened and asked Mr G who the payment was for, what it was for, and for the surrounding context of the payment - it could, for example, have asked how he had been contacted; whether he'd parted with personal details in order to open a trading account; whether he was being helped by any third parties e.g. a broker; and how he had come across the investment.

I have no reason to believe Mr G wouldn't have been open with Santander, and I think he would have taken its intervention seriously. So, I think Santander would have quickly learned from its conversation with Mr G the basic background to the payment instruction – that he was buying cryptocurrency and then sending onto what he thought was an investment trading platform which he'd decided to pursue after learning about it via a celebrity endorsement.

Even though the conversation would have identified the payment was going to Mr G's own crypto account (before being sent onto the scammers), the conversation shouldn't have stopped there on the basis that the money appeared to be going to somewhere safe and within Mr G's control. This is because by this point Santander was well aware – or ought to have been well aware – of how scams like this work. This includes situations where the customer moves money – often large amounts or multiple amounts over a short period of time - into a crypto account in their own name, before moving it on again to scammers.

So, I think Santander would have been concerned by what the conversation would most likely have revealed and so warned Mr G, explaining the typical characteristics of scams like this. Had it done so, I think Mr G would have listened and recognised he was at risk. I am satisfied he would have had second thoughts if Santander had intervened effectively.

It therefore follows I think Mr G would not have gone ahead with payment 2 or the payments afterwards.

I've considered carefully whether Mr G should hold some responsibility for his loss by way of contributory negligence. In this instance it is unclear what research Mr G did prior to investing. I say this because there was limited information about B available at the time online. Mr G invested a large amount of money without being able to withdraw a substantial amount and although Mr G said he saw an advert saying a well-known celebrity was involved in the investment in question, such adverts can be easily faked – as was clearly the case for the scam that Mr G was involved in. So overall, I am not satisfied that Mr G took appropriate steps to establish what he was doing was legitimate.

Having considered everything, I think that Mr G contributed to his own loss. Because of this, I think that it would be appropriate to reduce the amount of compensation due to Mr G by 50%.

I have thought about whether Santander could have recovered the funds via a chargeback for the credit card payments but in this instance as the payment was for a training course that Mr G has not said he didn't receive I don't think that there are grounds for a chargeback.

In relation to the transfers, the Contingent Reimbursement Model ("CRM") does not apply to funds sent to an account in the consumer's own name. I also don't think that there was any other way to recover the funds.

Putting things right

So, to put matters right, I require Santander to do the following:

- Refund 50% of Mr G's loss to the scam, from transaction 2 onwards; and
- Add 8% simple interest annually on those sums from the date of each payment, to the date of settlement, less any tax lawfully deductible.

My final decision

Because of the reasons given above, I uphold this complaint in part and require Santander UK Plc to pay the redress outlined above, to put matters right, in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 31 July 2024.

Charlie Newton
Ombudsman