

The complaint

Mr M complains that Santander UK Plc ('Santander') won't refund him the money he lost in a scam.

What happened

Mr M says he was at a low point on his life when he met someone he communicated with on a social media app and then moved to a messaging app. I'll refer to this person as B in my decision. In hindsight, Mr M says that B cultivated a relationship with him. He says that over time B started talking about cryptocurrency and investments with a company I'll refer to as E that essentially made loans. The rate of return was high as the interest from the loans accumulated.

Mr M has explained that because of the impact on his health he has deleted all his messages. He recalls researching E and seeing that it was a genuine company. Mr M was referred to particular sections about E's ethos and goals. B also guided Mr M to an online portal to deposit funds where he could track the progress of the investment. He started with small transactions and was able to withdraw a small amount of interest, which reassured him that the opportunity was legitimate. After around three months Mr M says his investment had tripled in value and he tried to withdraw it. He contacted B for help, and she told him that to withdraw his funds he would have to pay tax and fees. B sent Mr M screenshots of her account and withdrawals.

Mr M made the following payments as part of this scam. The payments were made via S (a digital wallet provider) and then credited to cryptocurrency wallets as directed by B.

Date	Amount
16/03/22	£100
22/03/22	£200
22/03/22	£14,000
22/03/22	£1,100
23/03/22	£250
Total	£15,650

Mr M says he spoke to a friend who advised him he was the victim of a scam. He contacted Santander to report what had happened on 27 May 2022.

Santander said it couldn't consider Mr M's claim under the Lending Standards Board Contingent Reimbursement Code (CRM Code) as he paid an account in his own name and the CRM Code only applies to payments to another person. Santander went on to say that the payments didn't flag on its security system.

Mr M was unhappy with Santander's response and brought a complaint to this service. He said the £14,000 and £1,100 transactions were totally out of character and questioned why Santander didn't intervene. Mr M also said that Santander was wrong in saying the account

he paid (at S) was in his name and that it has failed to take into account the fact he is vulnerable.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full. He said that as Mr M had no control over his account with S the complaint fell under the CRM Code. The investigator concluded that at the time he made the payments Mr M was vulnerable as set out in the code – which says in these circumstances a customer should receive full reimbursement. This was on the basis that at the time the payments were made Mr M had lost his job and was suffering with health conditions that affected his decision making.

Santander didn't agree with the investigator's findings. In summary it said:

- The transactions aren't covered by the CRM Code, as the funds were sent to an account in Mr M's name and provided evidence from S that this was the case.
- It had a primary duty to execute Mr M's payment instruction and had no knowledge that any of the payments from Mr M's account arose in the context of an attempt to misappropriate his funds. This was because Mr M was paying his own account at another registered entity, so it had no reason to be concerned.
- Mr M's real complaint was with S, from where his funds went to a scammer. Santander said it was imperative that S reach a claim decision, given the loss was from an account with S.
- Finally, Santander said that the investigator's opinion was completely untenable given the Supreme Court judgement in *Philipp v Barclays Bank Plc*. In that case it was decided that where a bank receives a payment instruction from a customer which is clear and leaves no room for interpretation, if the customer's account is in credit, a bank's primary duty is to execute the payment instruction. The duty is strict, and the bank must carry out the instruction promptly and without concerning itself with the "*wisdom or risks of the customer's payment decisions*". Santander doesn't believe it breached any duty owed to Mr M.
- Turning to whether the £14,000 transaction was so unusual and out of character that Santander should have intervened, Santander said it wasn't unusual for Mr M to credit his account to facilitate an onward payment and referred to the fact there was a credit to his account of £20,000 in March 2022 followed by a £19,000 transfer the following day. Santander also said the fact the payment was going to Mr M's own account meant it had little or no reason to question it.

The complaint was passed to me, and I issued my provisional decision on 13 February 2024. In the "*What I provisionally think – and why*" section of my provisional decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Should Mr M's complaint be considered under the CRM Code?

The first thing I need to consider is whether the CRM Code applies. The CRM Code only applies to certain types of payment made, in pounds sterling, between accounts based in the U.K. The investigator and Santander discussed at length whether Mr M had control of his account with S. I've listened to a call between Mr M and Santander in June 2022. I consider Mr M was clear in the call that he transferred funds to S which he converted to cryptocurrency and then sent on to what he described as another platform that was

controlled by the scammer. Santander has also provided evidence to show that the account with S was in Mr M's name. This means that the payments to the scammer weren't faster payments, so aren't covered by the CRM Code.

In the same call there was a conversation about the account Mr M was sending money to and whether it had been closed. Mr M confirmed he didn't know about this account and that he'd tried to take money out of it, but it had been frozen, and he'd sent messages to customer services. The responses he received, which asked him to pay more to release his funds, were from the scammer. I think this might be where the confusion about whether Mr M controlled the account came from.

On balance, I'm satisfied that the CRM Code doesn't apply in this case. This means that I can't consider Mr M's complaint under the provisions of the CRM Code and the investigator's findings about how vulnerability should be treated under it aren't relevant.

Considering Mr M's complaint under Santander's wider obligations

Aside from the CRM Code, a bank still has wider obligations and a duty to protect its customers, as far as is reasonably possible, against the risk of financial harm from fraud and scams.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr M's account is that he is responsible for payments he's authorised himself. And (as Santander has referenced) the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

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:

The starting position is that it is an implied term of any current account contract that, where a customer has authorised and 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.

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.

Turning to Santander's March 2022 terms and conditions, under section 6.6 it says:

We can refuse any Payment Instruction, if:

e) we reasonably suspect it relates to fraud or any other criminal act

and under 6.9.3 it says

..... A faster payment will normally reach the bank of the person you want to pay in the timescale set out provided that d) we do not suspect fraudulent activity on your account. (There may be a delay in processing the payment while fraud prevention checks take place. We may need to contact you if we suspect that a payment is fraudulent). If we contact you, this may be by phone and may include an automated message.

So in accordance with Santander's own terms and conditions it could therefore refuse payments, or make enquiries, where it suspected fraud. Whilst the current account terms did

not oblige Santander to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Santander from making fraud checks before making a payment.

And, whilst Santander was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good practice at the time, it should fairly and reasonably have been on the look-out for the possibility of APP fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Santander, do.

The detailed reasoning for this has been set out in substantial detail in recent decisions to Santander, so I don't intend to repeat it here.

But, overall, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had 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). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – as in practice all banks do.
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (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.

Should Santander have fairly and reasonably made further enquiries before it processed Mr M's payments, and would that have prevented the loss?

I don't consider Santander ought reasonably to have had any concerns about the first two low value payments, as they were in line with Mr M's normal account use. The transaction for £14,000 was significantly out of character. I'm aware that Santander has told this service that Mr M had a history of crediting his account and then making large transactions. It referred to a credit of £20,000 on 21 March 2022 and a transfer of £19,000 the following day. I don't consider that a transfer to Mr M's own savings account (which I understand to be with Santander) can be compared with a transfer to S or that it should fairly be considered in assessing his usual account activity. The transaction was also to a payee created around a week before.

I've thought about what's most likely to have happened if Santander had intervened as I consider it ought to have done. I'm satisfied that proportionate questions would quickly have led to the conclusion Mr M was likely being scammed and so further loss could have been prevented. Mr M met B on social media, had never seen her in person and was offered high

rates of return. The platform details he has provided do not sound genuine to those with knowledge of fraud and scams.

In reaching my view that Santander ought fairly and reasonably to have made further enquiries, I consider Santander ought to have been mindful of the potential risk to Mr M of 'multi-stage' fraud – whereby victims are instructed to move funds through one or more legitimate accounts held in the customer's own name to a fraudster. The use of and risks to customers of multi-stage fraud were well known to banks in 2022.

Santander has said this service needs to consider a complaint against S. The dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against multiple financial businesses about connected circumstances, Mr M has only complained about Santander. DISP does not empower me to instruct Mr M to make or refer a complaint about another business and I am required to consider the complaint in front of me.

Should Mr M bear any responsibility for his loss?

I've thought about whether Mr M should bear any responsibility for his loss. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint.

I can understand why Mr M has chosen not to retain messages he exchanged with B and why he finds it hard to remember exactly what happened at the time of the scam. He was duped by someone he considered to be a friend at a very low point in his life.

There are features about this scam that make it plausible, such as the fact Mr M was initially able to withdraw some profit, the scammer referred to a genuine company and Mr M had access to a platform that showed how his investment was performing. These features would have been persuasive. But Mr M had never met B and seems to have been offered a high rate of return.

Overall though, I'm required to reach a decision that is fair and reasonable in all the circumstances of the complaint. In deciding this I have taken into account how vulnerable Mr M was at the time he fell victim to the scam. Santander's internal notes record Mr M's vulnerability, and he has explained the reasons on the complaint form that has already been shared with Santander. At the time of the scam Mr M had lost his job which made him want to bring money in to support his family. He was also suffering from health conditions that meant his ability to rationalise what he was told was compromised.

Taking everything into account, I don't consider it would be fair or reasonable to make a deduction based on Mr M's actions. He has explained that he discussed his vulnerabilities with B, who exploited them."

Responses to my provisional decision

Santander said it had nothing further to add and Mr M didn't raise any additional points.

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.

As neither party has made any new points for me to consider I uphold this complaint for the same reasons as I set out in my provisional decision (and reproduced above).

My final decision

For the reasons stated, I require Santander UK Plc to:

- Pay Mr M £15,350; and
- Pay interest on this award at the rate of 8% simple per year from the date of each transaction to the date of settlement.

If Santander UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it has taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 March 2024.

Jay Hadfield
Ombudsman