

The complaint

Mr D complains that Santander UK Plc ('Santander') won't refund the money he lost after falling victim to a scam.

What happened

In March 2023, Mr D looked online for a company that would help him invest in cryptocurrency. Mr D says cryptocurrency and trading were being talked about in the media and he'd seen some celebrity endorsements.

Mr D was contacted by someone who said they worked for a company as an account manager, and they could help him with cryptocurrency and trading. I'll refer to the company as X. Mr D says the account manager was very knowledgeable and used a lot of technical terms. He searched for X online and saw positive reviews. He also thought their website looked professional.

Mr D was told to download screen sharing software so the account manager could help him set up his trading account – Mr D can't remember if he had access to this account. Mr D separately opened a digital wallet with another company.

Initially Mr D only invested £250, using his Santander debit card. He was able to see the £250 credit his trading account, watch the trades the account manager made and his balance increase. The account manager said Mr D could generate bigger profits by investing more, so Mr D invested a further £5,000.

At the end of May 2023, Mr D was told about an investment opportunity coming up in a large well-known company, with a minimum investment of \$10,000. So, Mr D made a payment of £9,999.

In June 2023, Mr D asked to withdraw the balance from his trading account and was told that he needed to pay withdrawal fees and tax. Mr D was told the payments had to be made through a separate company, and when he received an email from that company, he made the requested payments.

When Mr D attempted to make a further payment for additional fees, Santander intervened and called him to discuss the payment. As a result, the scam was uncovered, and no further payments were made.

These are the payments that Mr D made from his Santander account.

Date	Pmt no	Details of transaction	Amount
30.3.2023	1	Card payment to X	£250
3.5.2023	2	Bank transfer to Mr D – his digital wallet	£5,000
30.5.2023	3	Bank transfer to Mr D – his digital wallet	£9,999
9.6.2023	4	Bank transfer to Mr D – his digital wallet	£5,167
12.6.2023	5	Bank transfer to Mr D – his digital wallet	£5,476

Mr D raised a fraud claim with Santander in July 2023, through a professional representative. Santander declined to refund Mr D saying his payments weren't covered by the Contingent Reimbursement Model Code (CRM Code) and that he'd authorised the payments.

Mr D wasn't happy with Santander's response, so he brought a complaint to our service.

An investigator looked into his complaint but didn't uphold it. The investigator didn't think the payments were so unusual and out of character that Santander should've been concerned and intervened.

Mr D disagreed with the investigator's opinion, saying payment three was unusual and out of character based on its value and that it depleted his account balance. And, had Santander intervened at that point, the scam would've been uncovered and his loss prevented. Mr D also highlighted that while he had made some larger than usual payments in the months prior to the scam, these related to a change in his personal situation, and weren't indicative of his usual account activity.

As the case couldn't be resolved informally, it was passed to me to review.

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 really sorry to hear about the serious impact this cruel scam has had on Mr D, both financially and on his wellbeing.

Why the CRM Code doesn't apply

Santander are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But the CRM Code is quite explicit that it doesn't apply to all APP scam payments, and it doesn't cover card payments. The Code only covers APP scam payments when the funds are being transferred to another person and not to a consumer's own account. In this case, Mr D sent the money to a digital wallet held in his name, before moving it on to the fraudster. This means I can't hold Santander responsible for Mr D's loss because of any obligation under the CRM Code.

Should Santander have intervened?

In broad terms, the starting position in law is that Santander are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's). Here it's not in dispute that Mr D authorised the payments, although I appreciate that he did so not realising he was the victim of a scam.

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 preventing fraud and scams.

Also, I'd expect Santander to have 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). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – as in practice all banks do.

I'm not satisfied that I can fairly say Santander should've identified a potential risk or been concerned about any of the payments in the table above.

The first payment Mr D made was a card payment of £250. Based on the low value of the payment, I wouldn't have expected Santander to have intervened.

When Mr D made the second payment for £5,000, it wasn't significantly larger than other payments Mr D had made from his account. I appreciate that these payments may have related to a one-off change in personal circumstance, but he had made a payment of over £3,000 in May 2023 and three individual payments of between £1,300 and £4,500 in March 2023.

When Mr D made the third payment for £9,999, it was twice the size of the previous payment. However, it was made to an existing payee, was going to an account in Mr D's name and was made nearly a month after the prior payment. I appreciate that it decreased Mr D's account balance significantly, but the remaining balance wasn't out of step with what it had been in previous months. So, I'm not satisfied there was sufficient concerning information whereby I'm persuaded that Santander should've identified a potential risk of harm.

All of the subsequent payments that Mr D made, went to the same existing payee, being an account in his own name. They were also spread out, unlike more concerning payment patterns where there are multiple payments made on the same day or in very quick succession. Also, there weren't other concerning factors about those payments which might've alerted Santander to a potential risk, for example, multiple new payees or payments identifiably relating to cryptocurrency.

Santander did intervene when Mr D attempted to make another payment, not included in the table above. But, just because Santander intervened at that point, doesn't mean that I can fairly conclude they should've intervened earlier.

I have carefully considered the points that Mr D has made, but I'm not satisfied that I can fairly say Santander should've identified a potential risk of financial harm when he made his payments. On that basis, I wouldn't have expected them to intervene and can't fairly hold them liable for Mr D's loss.

Could Santander have recovered Mr D's funds?

All of the payments Mr D made, went to a digital wallet he held with an electronic money institute (EMI), so any funds that remained could've been recovered by Mr D. Santander can only attempt to recover funds from the beneficiary account, not the ultimate destination of the funds being an account controlled by the scammer.

I'm very sorry to disappoint Mr D, but I'm not satisfied that I can fairly ask Santander to refund him.

My final decision

My final decision is that I don't uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 January 2025.

Lisa Lowe
Ombudsman