

The complaint

Mr N complains about Santander UK Plc.

He says that Santander didn't do enough to protect him when he became the victim of a scam and would like Santander to refund him the money he has lost.

What happened

Mr N was interested in investing – and had heard and seen advertisements online suggesting this was an opportunity to make money.

One of Mr N's friends shared an advert on Instagram advertising investment in cryptocurrency – which Mr N assumed was genuine – however it later transpired that his friend had been hacked.

Mr N said that the advert seemed very professional, and he asked his friend to find out more information about the investment he was supposedly promoting.

Mr N was then put in contact with an individual who gave him more information and how he could get involved. He found this to be impressive and professional and was persuaded to start investing. He was told that he would make £10,000 off an investment of £3,000. He made two successful payments to the supposed investment of £1,000 and £2,000.

Shortly afterwards, Mr N tried to withdraw his profits, but was unable to and realised he had been scammed.

Mr N complained to Santander, but it didn't uphold his complaint, so he brought his complaint to this Service.

Our investigator looked into things and thought that the complaint should be upheld in part.

Mr N agreed to this, but Santander did not.

As no resolution was reached, the complaint was passed to me to make a decision. I have previously issued a provisional decision where I said that I was currently minded not to uphold Mr N's complaint. Santander accepted this, but Mr N did not.

I now issue my 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.

Having done so, I have decided not to uphold this complaint. I know this will be disappointing for Mr N, so I'll explain why.

It isn't in dispute here that Mr N has fallen victim to a scam and lost money as a result.

However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

In broad terms, the starting position at law is that banks, electronic money institutions (EMI's) and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

Mr N authorised the payments in question here – so even though he was tricked into doing so, and didn't intend for the money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Santander should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the above, 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, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr N when he authorised payments from his account, or whether it could or should have done more before processing the payments.

I don't consider that Santander should have got in touch with Mr N about the first payment he made – I don't think that it was sufficiently unusual or suspicious enough for Santander to have had concerns Mr N may come to financial harm – and as I've said above, businesses can't be involved in every transaction.

However, after several unsuccessful payments, Santander did get in touch with Mr N when he was trying to make a payment for £2,000 and spoke with him about what was going on.

During this call, Santander asked Mr N the following questions, and provided advice. I have also included Mr N's summarised answers.

- Where did you find out about this company? *'Through a close friend, you don't need to worry about fraud...why are you asking me'*
- Most of the crypto scams we see involve someone else offering helping you or having access to your wallet, devices, or account
- You should not go through with this payment if you have found this opportunity through social media
- Have you called the company you are investing in to check that it is legitimate? *'Yes, I have'*
- This could be a scam if you have been promised returns that are too good to be true or if you have been told that the risks of investing are low
- If you don't fully understand the details of what you're investing in, stop and do not send your money
- Can I confirm that you have considered all the information I have given you, and that you are comfortable to carry on? *'Yes, I have'*
- Have you ever invested in crypto before? *'No'*
- What makes you think this is a genuine investment? *'I was told by a family friend that it was something I could do'*
- Is there anything else that makes you think this is genuine? *'No, I trust them'*

The Santander representative then put Mr N on hold, and when they came back told him that they recommend Mr N do some more research into what he was doing or making a smaller payment to test things out, but that they would unblock his card. Mr N said that he understood the risk and was happy with the payment.

Having listened to this call, I think that Santander questioned Mr N appropriately for the size of the payment he was making – and also highlighted several things that had Mr N taken notice of, should have caused him concern.

Although Mr N thought he had been recommended the investment by a friend – this was through social media, and not in person – he was also not talking to his friend through his hacked account, but to a third party. And he had also been told that the investment carried no risk – with unrealistic returns – which I have seen in the Instagram messages that were exchanged with the scammer. While Santander could have asked him how his friend told him about the supposed investment, I think it did enough to warn him that investment opportunities through social media are likely to be a scam.

I've also noted that Mr N conducted no research into what he was doing – and he hadn't checked that the business was legitimate, despite what he told Santander.

With this in mind, I do think that Santander gave Mr N enough information and asked enough questions to try and uncover the scam, but Mr N withheld some information, and also didn't act on the information or advice it gave to him. So, I don't agree that it missed an opportunity to uncover the scam.

It follows that I don't uphold this complaint.

I am very sorry for the situation Mr N now finds himself in – I know that he has lost a lot of money and is upset about what has happened. But this is the fault of the scammer, not Santander – and I can't ask it to refund him when I don't think that it has done anything

wrong.

My final decision

I don't uphold this complaint.

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

Claire Pugh
Ombudsman