

The complaint

Mr R complains that Santander UK Plc won't refund the money he lost to an investment scam.

What happened

Mr R says he came across an advert on social media promoting forex and cryptocurrency trading with a company I'll call 'L', which offered good returns at low risk. He used a web search to research L and found no 'red flags', so he completed an online form providing his contact details.

Soon after, Mr R was contacted via WhatsApp by one of L's brokers who created his trading account for him.

Mr R made payments from his Santander account to one of his other banking providers (Bank A), so that he could purchase cryptocurrency via various exchanges. Once Mr R purchased his crypto, he moved this onto his L trading account. Between May 2023 and June 2023, Mr R made 12 debit card payments from his Santander current account totalling £28,040.85 as part of his investment with L.

Mr R says L's broker showed him winning trades but they would not let him withdraw profits and would constantly urge him to invest more money. Mr R used his Santander account and an account with a different banking provider (Bank B) to facilitate the payments towards his Bank A account and then on to the crypto exchanges and subsequently the scammers. Mr R later realised that he'd fallen victim to a scam and complained to Santander.

Santander declined to refund Mr R's payments.

Unhappy with its response, Mr R referred his complaint to this service. Mr R also referred his complaints about Bank A and Bank B to this service.

One of our Investigators looked into things and didn't find that Santander could have reasonably prevented Mr R's loss. She said that whilst Santander didn't intervene, Bank B did and this made no difference to Mr R's loss. Mr R didn't agree and asked for an Ombudsman to consider his complaint.

The complaint has therefore been passed to me for determination.

I will only be considering Mr R's complaint about Santander in this decision, though I will refer to any material evidence from his other complaints with this service about the same scam.

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 don't uphold this complaint and I'll explain why.

Banks and other Payment Services Providers ("PSPs") have expectations to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice.

Neither party disputes that Mr R was the victim of a scam. From the evidence provided by Mr R and an explanation of his dealings with L, it would appear to me that it's more than likely he fell victim to an investment scam. Having concluded that this was a scam rather than just a genuine investment that went wrong. I must now go on to consider three more issues in order to determine the outcome of the complaint:

1. Should Santander have fairly and reasonably made further enquiries before it processed Mr R's payments?
2. If so, would Santander's further enquiries have made a difference and prevented or reduced the loss?
3. And if so, should Mr R bear some responsibility for the loss such that it would be fair and reasonable to reduce compensation proportionately.

Should Santander have fairly and reasonably made further enquiries before it processed Mr R's payments?

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr R's account is that he is responsible for the payments he authorised himself.

However, taking into account the law, regulatory 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 its customers were at risk of fraud (amongst 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; and
- 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.
- 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).

I've noted Santander didn't intervene in any of Mr R's payments and I've considered whether that was reasonable.

Like our Investigator, I don't think the first six debit card payments Mr R made were all that unusual when considering his normal account activity. They ranged from £7 to £4,613.80. Each disputed payment was at least two days apart from the previous disputed payment and in some instances were around two weeks apart. There were no distinguishing features

about the payments other than they were going to Bank A which was an account in Mr R's name. When considering Mr R's previous payment activity from January 2023, I can see that he'd made one-off larger payments ranging from £1,500 to £4,100. Therefore, I don't think the first six debit card payments ought to have reasonably flagged as suspicious to Santander.

Payment seven however, was the day after payment six and this payment was for £4,012. Whilst as a stand-alone payment, this wasn't all that unusual for Mr R, it was unusual for him to send consecutive larger payments. Payment six and payment seven combined began to represent unusual activity in my judgement. I think it would have been reasonable for Santander to have intervened. In my judgement, this was a missed opportunity to do so.

Would Santander's further enquiries have made a difference and prevented or reduced the loss?

I've noted that Mr R also used his Bank B account to send payments towards his Bank A account between May 2023 and June 2023 (the same period he used his Santander account to pay Bank A). And even though Santander didn't intervene, Bank B did, twice. I've listened to the calls and I've heard that Bank B questioned Mr R about his payments. Amongst the questions, Bank B queried whether Mr R was making payments for cryptocurrency, which Mr R denied. I've noted that Mr R was also asked to attend a branch as part of the intervention and when he did, he maintained his original answers.

I think if Santander had intervened, it's more than likely Mr R would have denied that he was purchasing cryptocurrency (based on his interactions with Bank B about the same scam).

Because of this, I don't think reasonable enquiries from Santander could have uncovered the scam and that's because I don't think Mr R would have been truthful in his responses based on his interaction with Bank B and what I think would most likely have happened.

I think any reasonable enquiries from Santander would have led it to conclude that Mr R was just sending money to another of his bank accounts.

In other words, I am satisfied an intervention from Santander probably would have made no difference to Mr R. Any failings by Santander were not the dominant, effective cause of his losses; they were just part of the background history or occasion that led up to them.

In light of my conclusions above on whether a warning would have made a difference, it is unnecessary for me to go on to consider whether Mr R himself was partly to blame for what happened (contributory negligence). Indeed, I have already concluded that he was responsible for his own investment decisions, and that such choices were the proximate cause of his losses.

For the avoidance of any doubt, I did consider Mr R's subsequent payments to Bank A (payments eight to twelve) which ranged from around £700 to around £4,700 but I don't think Santander should reasonably have made any further enquiries. The payments were in keeping with the payments Mr R had sent the month previously and were authenticated in app. I don't think Santander would have reasonably been concerned with the payments that followed payment seven and I think the app authentication were proportionate checks for it to have made.

My final decision

My final decision is, despite my natural sympathies for Mr R's loss, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 April 2024.

Dolores Njemanze
Ombudsman