

## The complaint

Mr P complains that Santander UK Plc has declined to refund the money he lost when he made multiple payments in connection with an investment scam.

## What happened

In 2020, a friend of Mr P told him about an investment opportunity with a company. I will refer to that company as W.

Mr P's friend told him he'd been investing with W, at the time seemingly successfully.

Mr P received some information from W and looked at W's website. He says he also looked at online reviews for which the majority were positive. He believed W was based in Switzerland.

W offered returns of around 20% per month on the capital invested. Attracted by the rates offered, Mr P was interested in going ahead and set up a trading account with W.

In order to fund his trading account with W, Mr P was told he either needed to transfer cryptocurrency to a wallet destination owned by W, or pay designated accounts (in Italy and in Poland).

To make an initial investment, Mr P set up a wallet in his own name with a legitimate cryptocurrency provider (which I will refer to as C). He then was able to send money to his wallet with C from his Santander account, purchase cryptocurrency and then forward that from C to W.

Mr P used this method for the first amounts he invested on 5 July and for most of the subsequent transfers to W. For the third transfer to W, Mr P was asked to make an international transfer to an account in Italy. The payee's name didn't match W's name – I will refer to that payee as E.

Later he was told to send a payment to a different international payee in Poland. Again the name bore no obvious relation to W. I will refer to that payee as P.

Initially all seemed to be going well. Mr P says he was seeing daily returns on his investment of between 5% and 10%. Around 9 August 2020, Mr P made a withdrawal from W back to C which he successfully received and then transferred to his Santander account.

Overall, the relevant payments made from Mr P's account with Santander were as follows:

Index	Date	Type	Destination (or Source)	Amount
1	05/07/2020	Faster payment	C	£201
2	05/07/2020	Faster payment	C	£50
3	07/07/2020	International transfer	E	£3500
4	16/07/2020	Faster payment	C	£450

5	17/07/2020	Faster payment	C	£750
6	03/08/2020	Faster payment	C	£275
7	04/08/2020	Faster payment	C	£100
8	05/08/2020	Faster payment	C	£50
<b>9</b>	<b>10/08/2020</b>	<b>Credit</b>	<b>C</b>	<b>-£953</b>
10	19/08/2020	Faster payment	C	£1000
11	19/08/2020	Faster payment	C	£2500
12	19/09/2020	Faster payment	C	£300
13	21/09/2020	Faster payment	C	£350
14	23/09/2020	International transfer	P	£2000
15	06/10/2020	International transfer	E	£2000
16	29/10/2020	International transfer	E	£2000

However, when Mr P tried to make a further withdrawal from W, he was given excuses, and ultimately this proved impossible. He realised he'd been scammed. His account with C contains no funds, and he has been unable to retrieve any of the money he sent.

In 2023, Mr P reported this to Santander.

The bank was unable to recover Mr P's money. It said it wasn't responsible for what he'd lost. He'd transferred payments either internationally (those payments to P and E) and to an account in his own name (the payments to C). Neither of these scenarios were covered by the voluntary CRM Code which can provide additional protection to APP Scam victims. Mr P had authorised all of the payments, and Santander was obliged to carry out his instructions. Some of the loss had occurred only when Mr P had sent cryptocurrency on to W, it did not directly follow from the payment between Santander and C.

Mr P didn't accept this outcome. He referred his complaint to this service for an independent review. One of our Investigators considered the matter. They thought Santander should be partly responsible for the losses Mr P had sustained.

She thought that the payments on 5 July wouldn't have looked particularly remarkable compared to Mr P's typical account usage. But she noted that at the point Mr P instructed the first international payment (made on 7 July and indexed above as transaction '3') Santander had spoken to him about the purpose of that payment before it would be processed.

Only part of the call was available, but having reviewed that the investigator wasn't satisfied that Santander had asked sufficient questions of Mr P. Had Santander asked for even basic details about what he thought he was investing in the scam would have been uncovered. Mr P wouldn't have made that payment or any of the subsequent payments to C, P or E. So, Santander could have prevented Mr P from making the payments from that point onwards.

Santander didn't agree. It thought it was unfair to conclude that the missing part of its call with Mr P wouldn't have included information that had provided Santander sufficient reassurance that the payment was legitimate. In the later part of the call, Mr P did confirm that he'd carried out checks into the investment, so Santander wouldn't have been able to prevent him from going ahead. In any event, it had a duty to make the payments as instructed by Mr P. Lastly, it was not responsible for the loss occurring from C, and Mr P ought to direct a complaint to C about these transactions.

As no agreement could be reached, the case was passed to me to reach a final decision.

I issued my provisional findings on the merits of Mr P's complaint on 30 March 2024. In my provisional findings, I explained why I intended to uphold Mr P's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

*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 to be good industry practice at the time. Where the evidence is incomplete or missing, I am required to make my findings based on a balance of probabilities – in other words what I consider is most likely given the information available to me.*

*Both sides accept Mr P gave the relevant payment instructions (albeit under the belief that he was making a genuine investment). The starting position in law is that Mr P is responsible for transactions he's carried out himself. However, the relevant account terms and conditions provide Santander with the right (but not the obligation) to:*

- 1) Refuse any payment instruction if Santander reasonably suspects it relates to fraud or any other criminal act.*
- 2) Delay payments while fraud prevention checks take place. The terms say that Santander may contact an account holder where it reasonably suspects a payment may be fraudulent, and this may involve contact by phone.*

*At the point Mr P instructed payment 3 in the table above, Santander exercised the right to delay the payment and to contact Mr P. This payment was an international transfer Mr P first instructed Santander to make on 6 July (and which Santander ultimately sent on 7 July).*

*Santander contacted Mr P on the evening on 6 July and its call handler explained that the payment had been "highlighted within our fraud monitoring system".*

*This indicates that Santander's fraud monitoring system had identified concerns about the payment. Santander was therefore delaying the payment to carry out additional checks including contacting Mr P about it. As I've noted above, the relevant account terms permitted Santander to do this. Furthermore, I consider that taking such action was reflective of good industry practice at the time.*

*I have gone on to consider whether Santander took sufficient steps in the enquiries it made of Mr P. I consider it a matter of good industry practice that, having the opportunity to interact with its customer about the transaction during the calls it had with him, Santander should have made proportionate enquiries.*

*Santander has provided a copy of a call recording in which Mr P was asked about the payment. There appears to be an earlier call which is unavailable – in the available call recording Santander's call-handler refers to a note made earlier by a colleague that the payment was for an investment.*

*Santander explains it no longer has a copy of that earlier conversation. So I can't know for certain what was or wasn't discussed in that call. Mr P doesn't recall it being any more detailed than the later call.*

*However, I am satisfied that the 'colleague note' referred to in the later call indicates that Mr P had provided Santander with the true reason for the payment. In other words, Santander would have been aware he believed he was making an international payment*

*for the purpose of an investment.*

*Given Mr P seems therefore to have been open about the underlying purpose of the payment, I see no reason to assume other than that he'd have also explained he was investing with W - had Santander asked him that question at the time.*

*I consider that asking something such as the name of the company Mr P was investing with was proportionate in the circumstances of this payment.*

*By the point of this call, there were two warnings registered about W on the IOSCO's (International Organisation of Securities Commissions) Investor Protection Portal. Both of these warnings had been registered on the IOSCO's Investor Protection Portal the month before Santander's discussion with Mr P on 6 July. The earliest of these warnings from an international financial regulator (dated 9 June 2020) includes the comments "Suspected scam". One of the warnings was from the Swiss Regulator – corresponding to the location from which Mr P believed W operated.*

*It therefore seems unlikely to me that Santander asked Mr P where he was investing. Had it done so, I believe Mr P would have told Santander that this was being invested with W. Knowing that, Santander could have readily identified that this international company was almost certainly operating fraudulently and likely a scam. Alternately, Santander could have provided Mr P with advice about how to check for warnings about an international firm - with the same effect.*

*Either way, that would have meant Mr P would have been made aware on 6 July that W was registered as being a suspected scam in the relevant jurisdiction and elsewhere. I don't consider it likely he'd have gone ahead to make any further payments to W (either through the international payment route or via cryptocurrency from his account with C).*

*In any event, knowing that a scam was suspected, Santander should reasonably have asked further questions about the investment and would likely have uncovered the unrealistic rate of return, as well as the lack of any obvious connection between E and W, aspects which I think would most likely have cemented the concerns.*

*On those grounds, I think it most likely that none of the payments to C, E, or P made on Mr P's account on or after 6 July would have been made. He would not have sustained the losses he did.*

*In reaching these findings I have considered Santander's point that the later payments made by Mr P to his account with C weren't payments made directly to a fraudster. But for the reasons set out above I am satisfied that it would be fair in the circumstances of this complaint to hold Santander responsible for Mr P's losses.*

*In particular, the potential for multi-stage scam payment journeys was something I am satisfied that Santander ought to have been aware of at this time, including the increase in the number of scams linked to cryptocurrency payments. In those circumstances, Santander was aware that payments such as these to a cryptocurrency exchange carried a higher than usual risk of leading to financial harm to a customer through the risk of fraud or scam. In my opinion it is fair and reasonable to consider that Santander should refund any losses that resulted.*

*That is the case even though another financial firm (C) was involved in the relevant payments. Mr P has asked me to consider his complaint about Santander, not about C. I do not have the power to compel Mr P to make or refer a complaint about C. My role is to determine the complaint before me.*

*I have found that Santander did not act fairly and reasonably in all the circumstances of this case. Whilst I recognise the possibility that Mr P might have cause to complain against C, I do not consider it would be fair to reduce any award I make against Santander for that reason. Mr P is entitled to complain only about Santander and I am satisfied that Santander could have prevented the losses he incurred if it had acted fairly and reasonably.*

*In the circumstances of Mr P's complaint about Santander, I find it fair and reasonable that Santander bears the responsibility for the loss that followed from Mr P's payments.*

*However, I must also consider whether Mr P should share some of that responsibility by way of contributory negligence.*

*There were a number of factors that contributed to Mr P's belief that W was a legitimate investment company. He'd had a personal recommendation from a friend who'd been seeing good returns. W apparently had a professional website, and its correspondence didn't look concerning to Mr P.*

*However, I also think there were other factors which ought to have been a significant cause for concern. And I think these should have led Mr P not to go ahead with the investment.*

*Firstly, the rate of return he was being offered by W was exceptionally high. Mr P says he was initially led to believe he'd receive 20% per month. In itself that is an unrealistic rate of return for a legitimate investment to offer. Yet when the investment started, he says W's website showed he was making daily returns of between 5% and 10%. A consistent return at either of these levels is too good to be true.*

*In those circumstances I think Mr P should have questioned how that could legitimately be offered. As a qualified accountant, he would undoubtedly have been able to quickly establish that returns of even 5% per day compounded would result in unrealistic gains even over relatively short time frame. Even at the lower rate of 20% per month that Mr P was initially led to believe he'd receive, his investment would have grown to over £1m in around a year's time.*

*While Mr P's friend had told him they could see profits being made, it seems the friend hadn't attempted to withdraw those profits from W.*

*I also think the need to fund the account with W through seemingly unconnected accounts held with banks in different European countries (not where W was based) ought to have been a significant red flag.*

*All in all, I think it is fair and reasonable that Mr P should bear part of the responsibility for the loss that resulted. In the circumstances of this complaint, I consider it would be fair to apply a 50% deduction.*

*Given Mr P has been deprived of the funds since the time he made the relevant payments, and that I have found that Santander could and should have prevented those payments from being made, I consider it appropriate that Mr P should be compensated for the time he has been without that money. I think it is unlikely he'd have left the money in his current account given his intention to invest it. Because he has been deprived of the opportunity to use it in any of a variety of other ways, I consider it would be fair in the circumstances to require Santander to add interest to the award at the rate of 8% simple per year.*

*Therefore, to put matters right, Santander should:*

- *Refund 50% of the net value of the transactions made as part of the scam on or after 7 July 2020 (the point of transaction '3' in the table above). For the avoidance of doubt, the payment of £3,500 made on 7 July 2020 is to be included in this calculation and the credit of £953 on 10 August 2020 can be deducted; and,*
- *Add interest to the resulting figure at the rate of 8% simple per year from the date of each payment to the date of settlement.*

In my provisional decision, I asked both sides to provide any further arguments or information by 19 April 2024, after which point, I said I intended to review submissions and issue my final decision on the matter.

### **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.

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 to be good industry practice at the time.

Where the evidence is incomplete, missing or contradictory, I am required to make my findings based on a balance of probabilities – in other words what I consider is most likely given the information available to me.

#### *Responses to my provisional decision*

Mr P responded and confirmed he accepted my provisional findings. Santander responded to confirm receipt of my provisional decision. It asked if Mr P had made other complaints against the other entities involved in the disputed payments or attempted recovery elsewhere. Our Investigator responded to say we were unaware of any such.

However, aside from this question, Santander has not submitted any additional information or arguments in response to my provisional findings.

I understand from its query that Santander may have concerns about the potential of double-recovery – in other words that Mr P might later (or may already have) obtained recovery of some of the money I find Santander should now repay to Mr P. Clearly that would not be a fair and reasonable result.

But I do not consider there is any realistic prospect of that being the case here. Mr P did initially attempt to recover funds through C. That attempt was unsuccessful, and no funds remain there. The company to which Mr P believed he transferred his cryptocurrency was not legitimate. Neither do E or P appear to have been legitimate - the two international payees. So there seems to me to be no realistic prospect of any recovery through those remaining avenues either. I'm simply not persuaded there is any real risk of double recovery here. And for the reasons given in my earlier provisional decision I consider it fair and reasonable in the circumstances that Santander should repay part of the loss here.

Aside from requesting this clarification, neither side has provided new information or arguments in relation to my provisional decision, so I see no reason to depart from the findings I reached previously and for the reasons I have already explained.

## **Putting things right**

For the reasons set out above and in my provisional decision I uphold this complaint in part and require Santander to:

- Refund 50% of the net value of the transactions made as part of the scam on or after 7 July 2020 (the point of transaction '3' in the table above). For the avoidance of doubt, the payment of £3,500 made on 7 July 2020 is to be included in this calculation and the credit of £953 on 10 August 2020 can be deducted; and,
- Add interest to the resulting figure at the rate of 8% simple per year from the date of each payment to the date of settlement.

Settlement should be made within 28 days of Santander being notified of Mr P's acceptance of this decision.

## **My final decision**

For the reasons given above, I uphold Mr P's complaint about Santander UK Plc in part and require it to put matters right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 June 2024.

Stephen Dickie  
**Ombudsman**