

The complaint

Mr S complains that Santander UK PLC won't refund money that he says he lost to a scam.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

Mr S made the following payments from his Santander bank account to a crypto exchange:

Date	Type	Amount
26 May 2021	Faster payment	£1,800
26 May 2021	Faster payment	£100
27 May 2021	Faster payment	£100
27 May 2021	Faster payment	£600
27 May 2021	Faster payment	£350
28 May 2021	Faster payment	£550
28 May 2021	Faster payment	£1,180
4 June 2021	Faster payment	£10,000
4 June 2021	Faster payment	£80,000
6 June 2021	Faster payment	£10,000
6 June 2021	Faster payment	£10,000
7 June 2021	Faster payment	£10,000
8 June 2021	Faster payment	£20,000
8 June 2021	Faster payment	£10,000
8 June 2021	Faster payment	£20,000
8 June 2021	Faster payment	£10,000
8 June 2021	Faster payment	£20,000
8 June 2021	Faster payment	£10,000
11 June 2021	Faster payment	£40,000
12 June 2021	Faster payment	£10,000
20 June 2021	Faster payment	£10,000
Total:		£274,680

He also received a £100 credit from the crypto exchange on 27 May 2021 – bringing the net amount to £274,580.

Mr S contacted Santander in March 2023 saying he'd fallen victim to a crypto scam. He explained to Santander that he received about £340,000 compensation as a result of suffering a life changing injury from a traffic incident. And that, while waiting for the money to arrive, he came across video content online that he left a comment on and which prompted a reply from an individual offering guidance on what he should do with the funds. This person directed him to invest in crypto and initially it did well before dropping in value, which prompted Mr S to request a withdrawal but he was advised against this. And so, Mr S said he left the funds invested and, after waiting and seeing an improvement, he recently tried

again to withdraw the funds. At which point, the funds were removed from his crypto account and the person had disappeared with all methods of contact ceasing.

Mr S told Santander that he visited the branch when he made the first major transaction, explaining to them it was for crypto and that he was being advised. And the deposit for £80,000 was followed by further payments over the next two days – totalling £270,000 – with no further questions asked. He explained he'd only ever put money in, with no withdrawals received, and the crypto account was managed by this adviser – who had access to the account.

Santander declined the fraud claim and provided their final response to Mr S on 28 June 2023. They acknowledged Mr S's situation but said their investigations showed it wasn't due to a mistake or error on their part. They apologised for the journey and service Mr S received but said they were unable to investigate the branch visit in 2021. Santander also provided a response they received from the intermediary payment service provider (PSP) that handled the transactions in 2021 regarding the fraud claim. The PSP said the transactions were executed in accordance with their terms and that they no longer support transactions to the crypto exchange – due to the Financial Conduct Authority not permitting the crypto exchange to undertake any regulatory activity in the UK. And so, they couldn't provide a refund or provide any additional information.

Mr S referred his complaint to the Financial Ombudsman. He said:

- He was left physically disabled because of the traffic incident, but it also left him vulnerable mentally as he suffered with severe depression, anxiety and PTSD.
- He communicated with the adviser via an instant messaging service app whereby he was told they wouldn't ordinarily accept him as a client as they usually only accepted those with £500,000 or more to invest. But they were willing to make an exception for him because of what he'd been through. The adviser then opened the account with the crypto exchange for Mr S and urged him to send the funds across immediately.
- Santander blocked his account following a phone call which required him to go into branch for it to be removed. And he arrived at the branch, before it opened, looking like a 'crazy person' as he was wearing a ripped top and shorts and was visibly shaking with nerves. Upon entering the branch, a member of staff unblocked his account and processed the transfer of funds to the crypto account.
- He was concerned about how the staff member handled the situation as they ought to have been more familiar with crypto scams and so, they should've asked him more than whether the funds were going to an account in his own name – including, for example, whether he'd opened the account himself. He also felt it would've been reasonable for Santander to have invoked the Banking Protocol as it was a unique situation given he didn't provide proof of the source of funds; his account balance hadn't been more than £2,000 previously and both his appearance and behaviour was strange.
- Santander should've seen the transactions as suspicious and raised red flags, but at no point did Santander reach out to contact him.
- He also found out, about ten days after making the payments, that some UK banks had applied restrictions on crypto transactions – but, again, Santander didn't make him aware of this either before or after the transactions.

- If Santander had a conversation with him about the payments then his loss and the pain he's suffered could've been avoided. He was in a vulnerable position and naive with crypto, whereas Santander have much more experience in these matters.

Our Investigator considered Mr S's complaint but she didn't think Santander had to do anything further. She said it wasn't in dispute whether Mr S authorised the transactions. But while Santander are expected to protect customers from fraud and scams, these expectations are based on there having been a fraud or scam. And, from the available evidence, she couldn't reasonably conclude Mr S had been the victim of a scam. This is because, other than his testimony, Mr S hadn't been able to show what happened to the funds other than it being sent to a crypto exchange, used to buy crypto, and then withdrawn from the account over a year later. And it's not a common feature of a scam for funds to remain within the victim's crypto account for such a long time – as it's typically immediately withdrawn by the scammers. Our Investigator also added that Mr S hadn't been able to show any of his interactions with the scammer, although she noted Mr S's reasons for this – that being the scammer deleted and removed the conversation history on the instant messaging service app - were plausible. But in the absence of any documentary evidence to prove the payments were made as a result of a scam, she didn't think she could reasonably conclude Mr S had been scammed.

Mr S disagreed and so the matter has been passed to me to decide. In short, and further to what Mr S had already explained, he added:

- The scammer managed his portfolio and invested on his behalf, and so was in full control of his crypto account. The scammer also added pressure by urging him to transfer funds so *"not to miss out on opportunities"*. And so, prior to receiving the compensation for his injury, he borrowed money from a friend.
- The scammer initially tried to delay and prevent the withdrawal request by telling him it wasn't in his best interests. It was only when he was adamant about the withdrawal that the scammer withdrew all the funds and deleted all traces of their conversation.
- Santander was in the strongest position to identify and prevent the scam given their greater knowledge and experience. And there was a clear duty of care owed by Santander to safeguard him from this scam – particularly given they were aware of his vulnerable position.
- Santander is under a duty to refrain from executing payments if they have reasonable grounds to believe the instruction could be an attempt to misappropriate funds from the customer. Santander should've had reasonable grounds for this – and they acted negligently by missing many clear opportunities to intervene and protect him.
- Santander failed to exercise reasonable skill or care in carrying out his instructions – as they facilitated the complex scam by allowing significant sums of money to be transferred to an account controlled by a criminal.
- If he'd been questioned or probed sufficiently about the payments, he would've openly explained the reasons for them – with Santander identifying signs of it being a crypto scam. And had they done this, he wouldn't be raising this complaint today.
- He would've listened and responded positively to any advice given by Santander had it been provided – and so he would've taken steps to withdraw the funds he'd deposited so far.
- The only scam warning he received from Santander was generic and provided when setting up the new payee. And the only 'disruption' to using his Santander bank

account happened when they blocked his account as a result of the telephone call which prompted him having to go in to branch.

- The scam hasn't been disputed by Santander.
- He's done his best to demonstrate he's been scammed – showing the money went to the crypto account before being stolen from that platform (and he can't show where the crypto went as there isn't any associated name with these transactions). He also went into detail about the online video content he came across where the scammer first contacted him. And so, he feels it is unfair to say the only evidence he has provided is his own testimony.
- What information he can reasonably provide should also be considered here – as there isn't any factual evidence he can provide to show where the funds have been transferred. It also makes sense that a scammer would delete incriminating evidence, as happened here with his conversation history being erased. And so, it isn't fair for him to be penalised for not being able to provide such evidence. Nor should his complaint be dismissed due to factors out of his control.
- He had however, after speaking with his friend whom he borrowed money from, retrieved some screenshots of the conversation he had with the scammer that he sent to her. And he provided these to the Financial Ombudsman to bolster his evidence of the scam.
- He doesn't think it is fair for the Financial Ombudsman to decide what is typical of a scam, as they're all unique. And here, he told the scammer that his mother was going to receive a large sum of money and so he may be able to invest more. This would explain why the scammer delayed withdrawing the funds as they wanted to steal as much as possible, and already had his trust.

Mr S's friend also provided a witness statement to support his claim that he has been the victim of a 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.

I know Mr S will be disappointed but having done so, and for reasons that I'll go on to explain, I've come to the same outcome as our Investigator.

I'd like to say at the outset that I appreciate Mr S has gone to considerable effort when providing his submissions in support of his complaint – providing significant detail as to what he says happened and why he thinks Santander is responsible for the loss he suffered. I therefore want to reassure him that I've given everything he's said careful consideration. And so, while I've summarised his points, and in far less detail than he provided, I want to stress that no discourtesy is intended by this. And if there is a submission or point that I've not addressed, it isn't because I've ignored it. Instead, it's simply because I've focussed on what I consider to be the central issues in this complaint – that being whether Mr S was the victim of a scam and if Santander is responsible for the loss he claims to have suffered.

Where the evidence is incomplete, inconclusive, or contradictory, I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

In line with the Payment Services Regulations 2017, consumers are generally liable for payments they authorise. Santander is expected to process authorised payment instructions

without undue delay. But as a bank, they also have long-standing obligations to help protect customers from financial harm from fraud and scams. Those obligations are however predicated on there having been a fraud or scam. And so, it would only be reasonable for me to consider whether Santander is responsible for the loss Mr S claims to have suffered if, indeed, he has been scammed. I've therefore considered whether Mr S was a victim of a scam.

It isn't in dispute that Mr S sent the above payments to a crypto exchange in May/June 2021. And Mr S has shown that the funds, which were used to purchase crypto, were withdrawn from his crypto account in September/October 2022. Given the anonymous nature of crypto transactions, I haven't seen anything to show where the crypto was sent – although Mr S insists it was stolen by the adviser who had full access to his crypto account and was managing his portfolio on his behalf.

While I've considered Mr S's testimony, I can't be certain what happened to the crypto held in his account. So, I've looked at the evidence that is available when considering whether Mr S was scammed or not. Mr S has explained he hasn't been able to provide the online video content that he commented on as it has since been removed. Nor can he provide the chat history with the scammer as he's explained they deleted it when contact ceased. He has however provided several screenshots that he says he sent to his friend, when he asked to borrow money, which shows parts of the conversation with the scammer. I've reviewed this carefully and, while it does appear to refer to a deposit being required for some form of investment, it doesn't provide any specifics of the investment nor does it evidence when this conversation took place, or whether it relates to the payments in dispute. I therefore don't think this alone is enough for me to reasonably conclude Mr S made the payments because of a scam.

Mr S's friend has also provided a statement in support of his complaint. But while I understand Mr S's reasons for providing this, the friend isn't independent to what happened – as, from what Mr S has told us, she is owed money that remains to be repaid and so naturally has a vested interest in the outcome of this complaint. I therefore don't think it would be fair or reasonable for me to rely too heavily on this statement here.

I do however think it's relevant to look at what happened to the funds after they were sent to the crypto account. At which point, I'd like to acknowledge Mr S's point that he doesn't think the Financial Ombudsman should consider what is typical of a scam as they're often unique. But while scams can have differences, I must decide what I think is most likely to have happened here – and so, I think it reasonable to take into account the common features of crypto scams when doing so. And this includes what happened to the money after leaving Mr S's Santander bank account.

In Mr S's case, the funds were sent to the crypto exchange in May/June 2021 but weren't withdrawn until September/October 2022 – roughly 16 months later. Mr S has suggested the reason for the delay in the funds being withdrawn was likely due to the scammer having his trust, and because he'd told the scammer that he'd likely be able to invest a further substantial amount in the future. And so, the scammer wanted to try to obtain as much money out of Mr S as possible. While I've considered this, I find this highly unlikely. This is because, although scammers will often try to squeeze further money out of their victims, I think it's more probable that a scammer would've immediately withdrawn the funds upon it being deposited in the crypto account – especially when considering it was more than a quarter of a million pounds. I consider it unlikely that a scammer would've left the funds in the crypto account, accessible to Mr S, for a sustained amount of time as there would've been the risk of the scam being uncovered and the funds being withdrawn by Mr S. And if a scammer was trying to entice Mr S to invest further, I would've expected them to have moved the crypto onto another trading platform – which likely wouldn't have been genuine – whereby Mr S wouldn't have had access to his funds. That didn't happen here and so, after

given it careful thought and taken into consideration the limited evidence that is available beyond Mr S's testimony, I don't think I can reasonably conclude Mr S's payments to the crypto exchange were made as part of a scam.

Mr S has said Santander failed to exercise reasonable skill or care in carrying out his instructions, and that they're under a duty not to execute payments where there are reasonable grounds for them to suspect the instruction could be an attempt to misappropriate funds. Mr S is correct in that Santander should protect their customers from fraud and scams – by looking out for unusual or suspicious payments and carrying out additional checks before processing them. But, as I've explained, these obligations are predicated on there having been a fraud or scam. And given I've concluded that these payments weren't made as part of a scam, these obligations don't apply here. Nor can I therefore reasonably conclude that any further questioning or probing of Mr S about the payment would've made a difference given there wasn't a scam to uncover.

I appreciate Mr S feels he shouldn't be penalised for not being able to provide evidence that is outside of his control. But I must make a decision here based on the evidence that is available to me. And while I'm extremely sympathetic to Mr S's personal circumstances regarding the injuries he sustained from the traffic incident, it would only be fair for me to direct Santander to refund the payments if I thought Mr S had been the victim of a scam and the bank were responsible for the loss – and I'm not persuaded that this was the case. For the above reasons, I don't think Santander has to do anything further.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 January 2024.

Daniel O'Dell
Ombudsman