

The complaint

Mr S complains that Santander UK Plc won't reimburse him with the money he lost to a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In 2021 Mr S says he was looking to invest in cryptocurrency and found a firm online that I'll refer to as N. Between August and November 2021 Mr S sent payments from his Santander account to an exchange I'll refer to as 'C'. Cryptocurrency was purchased which Mr S believed was then used to fund his investment with N. Mr S says that he had an account manager from N and access to a platform where he could see his account value rising.

In late October 2021 Mr S' account manager told him there was a problem and that his account was frozen. He was required to pay a further amount of around £26,000 to release his funds. Around this time Mr S was also referred to a Mr B who he was told also had significant funds frozen with N and who would assist him to recover the same.

At Mr B's direction Mr S started to use a different cryptocurrency exchange 'K' and he also opened an account with another bank 'B'. This was because Mr B told Mr S that B were more co-operative with payments being made to cryptocurrency.

Mr S made payments from his Santander account to C of around £165,000. There was also one payment on 23 November 2021 for £100 which went to K. Mr S also received credits back into his account from C of around £37,000. And whilst not the subject matter of this complaint, Mr S went on to send significant funds of over £630,000 from his account with B towards the scam. This included the proceeds of Mr S selling his home. The details of the relevant payments from and credits to Mr S' Santander account are below:

Date	Amount	Beneficiary	Notes
30 August 2021	£50	C	Online Banking
31 August 2021	£290.13 credit	N/A	From C
31 August 2021	£10,000	C	Online Banking
2 September 2021	£1,859.61 credit	N/A	From C
3 September 2021	£786.55 credit	N/A	From C
6 September 2021	£25,000	C	Online Banking
8 September 2021	£24,999.91 credit	N/A	From C
9 September 2021	£25,000	C	Phone Banking
13 September 2021	£7,000	C	Mobile Banking
14 September 2021	£3,000	C	In Branch
6 October 2021	£5,000	C	Mobile Banking
7 October 2021	£1,915.76 credit	N/A	From C
12 October 2021	£25,000	C	Mobile Banking

18 October 2021	£50 credit	N/A	Complaint Compensation from Santander
21 October 2021	£24,000	C	Mobile Banking
22 October 2021	£20,500	C	Mobile Banking
26 October 2021	£6,050	C	Mobile Banking
26 October 2021	£7,300	C	Mobile Banking
27 October 2021	£7,092.63 credit	N/A	From C
18 November 2021	£7,500	C	Mobile Banking
23 November 2021	£100	K	Unknown instruction method.

In February 2022 Mr S realised he'd been the victim of a scam and reported this to Santander. This realisation came when he was due to receive over £1,000,000 from Mr B (who was also going to buy back his home for him and provide him with two new cars) but was then informed that he'd been in an accident. Santander had intervened numerous times in the series of payments Mr S had made to C. And overall they felt they'd done enough to warn him of the risks involved. But in relation to two payments (9 and 14 September totalling £28,000), they felt they could have gone further. And so they refunded him with that amount. This still leaves Mr S at a significant loss, and he referred the matter to our service.

One of our Investigators didn't recommend that the complaint should be upheld. In summary she didn't think that any reasonable level of questioning by Santander would have resulted in Mr S not continuing to make payments towards the scam. So, she didn't recommend that they needed to do more.

Mr S disagreed and asked for an Ombudsman to review his complaint. In August 2023 I issued a provisional decision in which I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm aware of Mr S' linked complaints which arise from the same overall scam. But this decision is limited to whether Santander have acted fairly and reasonably in all the circumstances.

Overall, I'm intending to reach the same outcome as our Investigator. But as I'm providing a greater level of detail, I wanted to issue this provisional decision to give both sides a further opportunity to comment before finalising my decision.

Firstly, I'm very sorry to hear that Mr S has lost such a life changing amount to cruel and callous scammers. I have no doubt as to the significant impact this must have had (and continues to have) on him. My role here however is to act impartially to reach a fair and reasonable outcome. So, despite my natural sympathy for Mr S' situation, it would only be fair for me to direct Santander to do more if they are responsible for failings which either caused the loss or hindered its recovery.

Does the Contingent Reimbursement Model Code (the CRM Code) apply to this complaint?

In May 2019 the Lending Standards Board introduced the CRM Code. This is a voluntary code through which victims of Authorised Push Payment (APP) scams can sometimes receive reimbursement from the banks involved.

Mr S believes the payments he made from his Santander account fall within the scope of the

CRM Code. He has pointed out the way in which APP scam is defined in a recent consultation by the Payment Systems Regulator. Specifically, that it involves a transfer to an account 'controlled by the fraudster'. He believes this supports the CRM Code being applicable here. I've considered this, but I think the definition within the CRM Code itself should be used. And this means, for the CRM Code to apply, it requires that the payments were made to 'another person'.

Mr S' testimony around this issue hasn't been consistent. When Santander (and B) intervened in the payments he was making, he told them that he'd opened the accounts with C and K himself and that he had sole access to them. When Mr S reported the scam to Santander, he was asked whether he opened the accounts himself or if they were opened for him and he said: "I was assisted in the opening of the account..." The following exchange also took place:

Santander: "What happens is we've obviously got your money to start with, so then, you move your money from us to [C] and that money is then on that app. Did you move it from that app yourself or did they have control of that?"

Mr S: "Well, I was being told to move it, so I was acting under instructions."

Santander: "But they didn't have access to do that then?"

Mr S: "No."

Santander: "So you moved it all to the trading account or the investment?"

Mr S: "Yes"

This indicates that Mr S had both access to and control of the account. Further to this, when reporting the scam to B, Mr S confirmed that he was guided by the scammers when opening the cryptocurrency accounts, which suggests he did this himself. He was also asked if the fraudster showed him how to convert the funds into cryptocurrency and send them on, to which he replied "yes". This again suggests that Mr S had access to and control of the account. However, later in the same call, Mr S says that the account had two-factor authentication (2FA) and that this was always provided by the scammer, who provided the codes.

In his more recent submissions to our service, Mr S has said the accounts with C and K were opened and controlled by the scammer. He points out that Mr B was able to apply for a loan in his name with another business. Mr S has also shared what he says was part of his communication with Mr B from February 2022 which shows that Mr B had opened a new account in his name (although with whom isn't mentioned, and this was a few days before the scam was discovered). Mr S also said: "(Mr B) had access and equal control of the account. He opened accounts in my name, had the security details and passwords. He frequently used TeamViewer to take over control of my iPad." Mr S also shared evidence of what he says are emails sent, from his account, by the scammer and not him.

The net result of all of this is that I can't rely on Mr S' testimony particularly in relation to whether he opened and operated the accounts with C and K himself, as his testimony has changed over time. In cases like this where evidence is contradictory or incomplete, I have to make a judgement on the balance of probabilities. That being what I believe is most likely to have happened, taking into account all the available evidence.

I asked Mr S to provide all the evidence he had of the communication between him and the scammers. And having reviewed this I find the messages between him and the scammer to be persuasive evidence and I've placed more weight on it accordingly. It is, in effect, a contemporaneous record of what was said.

The message evidence is clear that Mr S was talked through the process of opening the account with C. It is equally clear that Mr S also had control of that account as there is a

conversation about Mr S' decision to withdraw £25,000 from the account with C back to his bank account in September 2021 – something the scammer criticised him for doing. This withdrawal is also supported by evidence from Mr S' Santander account statements – along with various other withdrawals for lesser amounts made around the same time.

Similarly, the message evidence shows that Mr S shared with the scammer a 'Know your Customer' (KYC) email which he'd received from K. This asked him to provide a photo of himself, presumably as part of their account opening process. The messages that followed involve the scammer assisting Mr S with submitting a photo and advising him of what to say to K. Mr S also later shared confirmation with the scammer that his account with K was open and had received a credit. This doesn't support that Mr S was unable to access that account.

Taking all the evidence into consideration, I think it's most likely that Mr S opened the accounts with C and K himself, albeit under the guidance of the scammers. Mr S has also maintained this in all but his most recent submissions in response to our Investigator's view.

I also think it's most likely that Mr S shared access to his accounts with C and K with the scammers. But I've not seen anything that persuades me that the scammers had sole or exclusive access to either account. Mr S' submissions also include that he'd reported the scam to K who had blocked his account, something they would be unlikely to do, were it not his account.

And in these circumstances, I can't fairly say that the payments made from Santander to the accounts in Mr S' name with either C or K, and to which Mr S had (or always could have had) access, were transfers to 'another person'.

Santander are a signatory to the CRM Code – but it is quite explicit that it doesn't apply to all push payments. As I've mentioned above, it only covers scam payments when the funds are being transferred to another person. In this case, on balance, I think Mr S sent the money to his own accounts held with cryptocurrency exchanges before it was then passed on to scammers. This means I don't think Santander have acted unfairly by not providing a refund under the CRM Code. If Mr S has further evidence that the accounts he funded with either C or K weren't his, he should supply this in response to my provisional decision and I'll take it into consideration.

But just because the CRM Code doesn't apply to the payments relevant to this complaint, this doesn't mean Santander weren't obliged to try to protect Mr S from financial harm due to fraud or scams. So, I'll go on to consider whether they've acted appropriately in the circumstances.

Did Santander do enough to try to protect Mr S from losing money to the scam?

Both parties agree that the majority of the payments Mr S made towards the scam were unusual and out of character compared to his previous account activity. So, I won't discuss that in further detail.

Santander's first obligation is to follow the instructions that Mr S provides. But if those instructions are sufficiently unusual or uncharacteristic for the account (as they are here), I'd expect Santander to intervene and to ask their customer more about the intended transactions before processing them. I'd also expect Santander to provide suitable warnings about common scams to help their customers make an informed decision as to whether to continue with the payments. There might also be cases where it's appropriate for Santander to refuse to follow the instruction, if there are good grounds to believe it is being made as a result of a fraud or scam.

In this case there were numerous instances of intervention from Santander with several conversations between them and Mr S. Throughout these calls Mr S' answers to the questions from Santander included that:

- He was investing in Bitcoin and was aware of the risks in doing so.*
- He had opened his Crypto wallet accounts himself and hadn't shared access or details of these with anyone else.*
- He had previously withdrawn funds without issue.*
- He had an Independent Financial Adviser (IFA) (based on a personal recommendation) who he had fully checked out and met in person who was assisting him with his investments.*

I think Mr S himself acknowledges that not all he said to Santander when they were challenging the payments was correct. To the best of my knowledge, Mr S didn't have an 'IFA' who had been recommended to him and who he had met in person. I assume Mr S was referring to his account manager with N. Mr S also later said that he was 'assisted' in setting up the accounts with C and K.

Banks like Santander should be alert to victims of scams who might be being coached. Which is why it's important that any questions asked are probing in nature and designed to try to unearth a potential scam. But, when not answering all the questions entirely truthfully, Mr S' actions hindered Santander's ability to try to protect him.

Around this time Mr S also complained to Santander because they kept stopping his payments to C and kept asking him lots of questions. He says he was paid £50 compensation and was assured that the situation would improve, and he expressed further frustration when he was still asked about payments going to C.

Some of the message evidence between Mr S and the scammer also supports that Santander's questions and warnings were detailed and in depth. In early September 2021 Mr S said to the scammer: "I was given the third degree about the dangers of scams and crypto currency's and how I learned about your company. Was I cold called – No! Had I done due diligence on the bank and [N]? Yes!..."

I've thought carefully about this, and I've also taken into account how Mr S responded to warnings given by B later in the scam in relation to payments sent from that account. And overall, I don't think any reasonable level of questioning would have prevented Mr S from instructing the payments. In the calls I've listened to Mr S sounds articulate and confident, there isn't anything in his demeanour that I think should have caused Santander to have further concerns. Overall, I think Santander did enough to highlight the risk of a scam and to provide suitable warnings to Mr S. This is particularly the case when I consider the overall impact of the numerous conversations that took place. And importantly, even if they ought to have gone further (something I'll come to below in relation to two particular payments), I don't think this would have made a difference.

I've also taken into account that the £3,000 payment listed above was made in branch, with an obvious opportunity for direct interaction and the potential to invoke the Banking Protocol. The Banking Protocol is a joint initiative between financial institutions and the Police. It centres around trying to protect customers from losing money to fraud, particularly in relation to in-branch withdrawals or transfers. Santander haven't been able to evidence what if anything was said in branch at the time. And on that basis, this is one of the payments they've refunded. But even if more should have been done in branch, I don't think the activity on the account, combined with the answers Mr S would most likely have given, would have caused Santander concern such that they ought to have followed the Banking Protocol to its

conclusion of calling the Police. I've no reason to think Mr S would have answered any questions differently compared to how he did on the numerous calls I've listened to.

I've considered whether there was enough here for Santander to have refused Mr S' instructions altogether. This is a significant step for any bank to take given their regulatory obligations as a payment services provider. To be clear, I do not expect a bank to refuse a payment request lightly or without reasonable grounds for suspecting fraud. However, the purchase of cryptocurrency can be a legitimate investment. And, based on all Mr S had told Santander, I don't think they would have had sufficient grounds to suspect fraud such that refusing his instructions would have been a reasonable expectation. Mr S presented himself to Santander as an individual wishing to invest in cryptocurrency without there being other indicators of a potential scam. During one of the calls he said: "If you don't know anything about Cryptocurrency it's a growing market. I have lots of investments. I invest in gold and stocks and shares and all sorts of other things and I've decided to invest in cryptocurrencies."

Santander refunded £28,000 in respect of two transactions where they felt they ought to have done more. But they maintained that even if they'd done all they should, it wouldn't have made a difference to Mr S continuing with the payments. I'm pleased Santander decided to exercise their discretion in this way to provide a partial refund. But as I agree that any potential failings in relation to the intervention in those particular payments wouldn't have made a difference to either the payments being sent or the scam being discovered, it isn't a basis upon which I can tell Santander they need to do more. Mr S was being coached by the scammer as to what to say, and he accurately did what he was advised to, meaning he was able to reassure Santander. And there wasn't anything so indicative of fraud in the account activity itself, where I think Santander should have done more.

I'm also satisfied that, upon receipt of notification of fraud, there wasn't anything Santander could've done that would've resulted in the recovery of more of Mr S' funds.

Mr S says that at the time of the scam he was vulnerable due to his age, health and being a widower. However, in a call with B (following the scam), Mr S was asked if he needed additional support. And he responded that other than the stress caused by the scam he was in good health and didn't need support. I wouldn't consider Mr S to be vulnerable based solely on his age (which is in his 70's). And I'm not persuaded that Santander treated Mr S unfairly here. Mr S came across as a confident and articulate customer. And even if he was vulnerable, I'm not persuaded this is something Santander reasonably could have known or ought to have ascertained at the time.

As I said at the start of my decision, I'm genuinely sorry to hear of the terrible crime committed by the scammers and I hope the authorities are successful in prosecuting those responsible and that this results in redress for Mr S. But as I don't think Santander are responsible for any errors that caused or contributed to the loss, hindered its recovery, or are obliged to provide a refund under the CRM Code, I'm not intending to tell them to do anything further to resolve this complaint."

Santander responded and said they had nothing to add. Mr S responded with some comments that I'll address below.

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.

Mr S says he's listened to the call recordings between him and Santander and he says they all follow a similar format. So, on that basis he's unsure why they refunded him certain payments and not others. Santander's final response letter to Mr S' initial complaint said:

"We do believe that any warnings provided wouldn't have altered your decision to invest. However, on two occasions on 9 and 14 September 2021, our warnings were not reiterated sufficiently to you by our advisers. As a result, we have agreed to reimburse the value of each of these transactions which totals £28,000."

I think this makes clear that Santander don't believe any warnings would have made a difference, yet despite this they were willing to provide a not insignificant refund. Taking all the circumstances into consideration, including all the interaction Mr S had with both Santander and B, I don't think it's likely that any reasonable level of warning or questioning would have made a difference to the payments being instructed. And had Santander not offered to reimburse the £28,000, this isn't something I fairly could have directed them to do. Clearly this payment is to Mr S' benefit, but it doesn't mean Santander are required to do more.

Mr S has also highlighted part of the communication between him and the scammer where the scammer indicates he had opened a new account in his name. I have made reference to that exchange (from February 2022) in my provisional decision. But for the reasons I've explained above and as Mr S didn't raise anything new, I still think it's most likely Mr S opened the accounts with C and K himself, albeit following instructions from the scammer.

Again, I'm sorry Mr S has lost such a significant sum of money to a scam. But as I don't think this is something Santander are responsible for, I can't fairly require them to do more to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't 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 27 November 2023.

Richard Annandale
Ombudsman