

## **The complaint**

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

## **What happened**

The circumstances of this complaint are well known to both parties, so I won't repeat all the details here. Instead, I will provide a summary and focus on giving the reasons for my decision.

Mr R was contacted via a well-known social media platform by a third-party promoting a cryptocurrency trading investment opportunity.

In July 2022, after doing some research and finding positive reviews, Mr R made a faster payment of £1,400 from his Santander account to an account in his own name held with an e-money provider. As the initial trades went well, Mr R invested a further £5,000 using the same payment method.

Mr R later became concerned when he requested a withdrawal from his investment, and he was asked to pay tax before the withdrawal could be processed. When he questioned this, his account was blocked and attempts to contact the third-party went unanswered. At this point, Mr R realised the third-party he'd been dealing with was a scam.

Mr R subsequently complained to Santander as he felt it failed to protect him from financial harm by not providing adequate warnings about the payments he'd made.

Santander didn't uphold Mr R's complaint. It was satisfied the payments had been properly authorised by Mr R. It also explained that, as the payments had gone into a genuine account held in Mr R's name with a legitimate cryptocurrency platform, the payments were not covered under the Contingent Reimbursement Model (CRM) code. Mr R was unhappy with Santander's response and so referred a complaint to this service.

One of our investigators considered the complaint, but he didn't uphold it. He didn't think the first payment Mr R made would have been particularly unusual or suspicious in appearance to Santander, considering Mr R's transaction history over the previous six months. He noted that Santander had intervened when Mr R attempted the second larger payment. And he thought Santander had provided Mr R with adequate scam warnings and raised appropriate questions about the transaction he was making. He also said that, even if Santander had tried to recover the funds, it would have been unsuccessful because by the time Mr R had contacted it about the scam the funds had already left the account Mr R had sent the money to.

Mr R didn't accept this outcome, he feels Santander should do more to protect customers from scams. He says that at the time he was in a vulnerable position suffering from a medical condition and was at risk of losing his job.

As agreement couldn't be reached Mr R asked for an ombudsman's review. So, the complaint has been passed to me.

## **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'm not upholding this complaint and for largely the same reasons as our Investigator. I realise this will come as a disappointment to Mr R, but for the reasons I'll go on to explain I don't think Santander has acted unfairly or unreasonably.

I'm sorry to hear Mr R was the victim of a sophisticated and targeted scam and lost money as a result. I can appreciate why he wants to do all he can to recover the money he lost. But I can only direct Santander to refund Mr R's losses if it can fairly and reasonably be held responsible for them.

Mr R doesn't dispute that he made the payments from his Santander account. This means they were authorised by him. So, the starting point under the Payment Services Regulations 2017 and the account terms and conditions is that Mr R is responsible for the payments as well as any resulting losses.

But the matter doesn't end there. Santander should also be on the look-out for, and help to prevent, payments that could involve fraud or be the result of a scam. It has also committed to reimbursing customers under the provisions of the Contingent Reimbursement Model Code (CRM Code).

The CRM code is a voluntary code which requires signatories, such as Santander, to reimburse customers who are victims of scams in all but a limited number of circumstances. But the CRM code does not apply in Mr R's case, as his payments were made to an account in his own name.

But there are other relevant obligations that could apply. In accordance with the law, regulatory rules and guidance, relevant codes of practice and good industry practice, Santander should protect its customers, as far as is reasonably possible, against the risk of financial harm from fraud and scams. As such, there are circumstances where it might be appropriate for it to take additional steps or make additional checks before processing a payment to help protect its customers from the possibility of financial harm from fraud.

But Santander would only need to intervene and ask more questions about a payment if an instruction was sufficiently unusual or uncharacteristic for the account. Ultimately, there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. So, the starting point for me is to consider whether any of Mr R's payment instructions were particularly unusual or uncharacteristic, either individually or collectively, considering his usual account activity.

I've reviewed Mr R's account statements from July 2021 to August 2022. Having done so, I can't reasonably conclude the initial payment to the scam was sufficiently out of character with Mr R's normal account activity or otherwise so unusual/suspicious that Santander should have intervened. Mr R statements show that in the six months leading up to the first disputed payment Mr R made several transactions for more than the disputed payment to the extent that the first disputed payment would have appeared in keeping with Mr R's day-to-day account activity. So, I would not have expected Santander to have intervened when he instructed the initial payment.

The second payment was larger than the first. And I've seen that Santander did have concerns about it. Santander blocked the payment and asked Mr R to contact it. I've listened to a recording of the subsequent call. Having done so, I'm satisfied that Santander asked

Mr R appropriate questions around why he was making the payment and it provided a warning about investment scams and the potential risks of investing in unregulated investments like cryptocurrency.

Even if Santander had asked more questions, I'm not persuaded this would have made a difference. In response to Santander's questions, Mr R indicated he was aware of the risks and that it was friends who had recommended the investment. He said he was learning to trade by himself and that no one else had access to his account. He added that he was comfortable making the payment. Overall, I'm not persuaded that Santander could have done anything more to prevent Mr R from making the payment.

I've considered whether, on being alerted to the scam, Santander should have done anything to recover Mr R's losses. But, by the time Mr R contacted Santander, it's not in dispute that the funds had already left the account he had transferred them to. So, I find that it's most likely that any recovery attempt would have been unsuccessful.

In conclusion, I have a great deal of sympathy with Mr R being the victim of what was clearly a cruel scam – particularly as it happened at what was a stressful time in his life. But it would only be fair for me to direct Santander to refund his loss if I thought it was responsible – and I'm not persuaded that this was the case. Everything considered, I cannot fairly and reasonably hold Santander liable in these circumstances. It follows that I will not be asking it to take any further action.

### **My final decision**

For the reasons given above, 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 R to accept or reject my decision before 6 November 2023.

Sandra Greene  
**Ombudsman**