

The complaint

Mr M complains that Santander UK Plc didn't do enough to protect him from the financial harm caused by an investment scam company, or to help him recover the money once he'd reported the scam to it.

What happened

In early 2021, Mr M began researching investments and came across a company I'll refer to as "N". He researched N and found positive reviews, so he completed an enquiry form and was contacted by someone claiming to be a broker.

The broker requested a copy of Mr M's passport and driving license to open an account with N. He also told him to download a screensharing application and to open an account with a cryptocurrency exchange company. He said he'd make trades on Mr M's behalf, and that he could log into his trading account to see his live trades and profits.

The broker asked Mr M to first purchase cryptocurrency through a cryptocurrency exchange company and then load it onto an online wallet. Between 4 March 2021 and 30 April 2021, he made six transfer totalling £20,560 from his Santander account.

On 4 March 2021, Mr M made an initial investment of £200, followed by a payment of £800 on 10 March 2021, and £4,500 on 16 March 2021. This payment was blocked by Santander and during the subsequent call, Mr M was asked if he'd checked N was registered with the Financial Conduct Authority ("FCA"). He was also warned about using AnyDesk and told that scammers tell victims to lie and that it's important to know where payments are going. Mr M said he was investing in Bitcoin, and the payment was approved.

When Mr M tried to make a withdrawal, the broker became aggressive, and he realised he'd been the victim of a scam. He complained to Santander, and it agreed to refund £500, which was 50% of the payments he'd made on 4 March 2021 and 10 March 2021. It said the payment had been reviewed under the Contingent Reimbursement Model ("CRM") code and it accepted it had failed to identify the transactions were high risk or to provide an effective warning. But it said the CRM code didn't apply to the payments he'd made between 16th March and 30th April 2021 because they were to an account in Mr M's name and moved on from there.

Mr M wasn't satisfied and so he complained to Santander. He accepted it had contacted him on 16 March 2021, but he said it failed to ask probing questions and if he was warned the investment could be a scam, he wouldn't have gone ahead with the payments.

Mr M's representative said Santander should have intervened as he made six payments to two new payees within the space of eight weeks. They said the pop-up messages weren't effective and it should have asked more questions on 16 March 2021 as it was a high value payment to a new payee which was associated with cryptocurrency. They said that if it had asked Mr M what the payments were for and the basic surrounding context, he would have fully explained what he was doing, in response to which Santander should have provided a scam warning, which would have prevented his loss.

My provisional findings

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr M says he's fallen victim to, in all but a limited number of circumstances. Santander had said the CRM code doesn't apply to the payments Mr M made from 16 March 2021 onwards because the payments were to an account in Mr M's own name, and I was satisfied that was fair.

I was also satisfied Mr M 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, he is presumed liable for the loss in the first instance.

It's not in dispute that this was a scam, although Mr M didn't intend his money to go to scammers, he did authorise the disputed payments. Santander is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I thought about whether Santander could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I'd seen, the payments were made to a genuine cryptocurrency exchange company. However, Santander ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I needed to consider whether it ought to have intervened to warn Mr M when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Santander to intervene with a view to protecting Mr M from financial harm due to fraud.

I considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr M normally ran his account. The first two payments were low value and so even though they were to a new payee, I didn't think Santander needed to intervene beyond the new payee warning.

Santander did intervene on 16 March 2021 when Mr M paid £4,500 to a new payee. During the call, Mr M said he was buying cryptocurrency and that he'd contacted the company himself. He was given a scam warning which included information about impersonation scams, and I agreed this wasn't relevant to the scam. And even though he said he'd checked the FCA website and that he'd contacted the company himself, as the investment involved cryptocurrency, I thought the call handler should reasonably have asked some more questions about the circumstances of the investment including how Mr M learned about the investment, whether he'd been promised unrealistic returns, whether he'd been told to download remote access software or whether he'd been allowed to make small withdrawals.

However, if he had been asked these questions, I didn't think there was enough information to enable Santander to identify this as a scam. There were no regulatory warnings with either the Financial Conduct Authority ("FCA") or International Organization of Securities Commissions ("IOSCO") websites. And Mr M came across N while researching investments, so there wasn't a red flag relating to how he'd learned about the company.

Mr M wasn't promised unrealistic returns and he was satisfied he'd done due diligence. He'd seen positive reviews online about the company and he was reassured because he had to

provide ID to open the account. He clearly trusted the broker who he thought was knowledgeable and professional and he was able to see his trades on the trading platform. So, I didn't think there was anything the call handler could have said in addition to what was said on 16 March 2021 which would have changed his mind about the investment or anything it could have advised him to do which would have uncovered the scam.

So, while I thought Mr M could have been asked more questions during the call on 16 March 2021, I didn't think this represented a missed opportunity in circumstance which could have prevented his loss.

I thought about Santander's comments regarding Philipp v Barclays Bank plc, but as I'd concluded that better intervention from Santander wouldn't have made a difference to the outcome, I didn't comment on that point.

Developments

Mr M's representative has responded to say he doesn't accept the findings in my provisional decision, arguing that it's unfair to assume the call handler wouldn't have been able to detect the scam.

They have said that I have referred to scam hallmarks including Mr M having seen positive reviews, the use of a trading platform and the fact he built a trusting rapport with the scammer, but I placed a greater onus on the absence of a warning on the FCA or IOSCO websites. They have argued that Santander's staff are trained to spot scams and that they wouldn't check the FCA and IOSCO websites during calls, instead relying on whether there are hallmarks present to reveal that something is untoward.

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've considered the further points raised on Mr M's behalf, but I maintain my view that there wasn't enough information to enable Santander to identify the investment as a scam.

I accept regulatory warnings with either the Financial Conduct Authority ("FCA") or International Organization of Securities Commissions ("IOSCO") websites are not necessary to identify an investment as a scam, but the existence of such a warning would have been one way for Santander to identify the investment as a scam. And, as I explained in my provisional decision, in the absence of such warnings, I'm not persuaded that there was any other information which would have helped it to identify that Mr M was being scammed.

Mr M's representative has said that there were hallmarks present including positive reviews online, the use of a trading platform and him having built a trusting rapport with the scammer. But I don't agree these features are clear scam indicators and I would expect typical red flags to include unrealistic returns, cold calls, a celebrity endorsement, or a complete lack of due diligence, none of which were present. And this, coupled with the fact Mr M had seen positive reviews online and clearly trusted the broker means I don't think Santander could have reasonably detected the scam or that its failure to do so represented a missed opportunity. Because of this, I maintain my view there wasn't anything the call handler could reasonably have said in addition to what was said on 16 March 2021 which would have changed Mr M's mind about the investment.

Therefore, I'm sorry to hear Mr M has lost money and the effect this has had on him. But for the reasons I've explained, I don't think Santander is to blame for this and so it doesn't need to do anything further to resolve this complaint.

My final decision

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 M to accept or reject my decision before 26 December 2023.

Carolyn Bonnell
Ombudsman