

The complaint

Mr R complains that Santander UK Plc won't reimburse him the money he lost when he fell victim to an investment scam.

He brings his complaint using professional representation. However, for clarity in what follows I will refer solely to Mr R even where submissions were made on his behalf.

What happened

Mr R says he had been looking for investment opportunities online. He wanted to build funds to enable the purchase of a property overseas. He found a company which purportedly offered investment trading (I'll refer to this company as D).

Mr R made contact with D. He says D's representative sounded professional. Mr R believed D to be legitimate.

D helped Mr R to set up an account on its investment platform. This platform would supposedly allow him to make investment trades. He was told he'd need to fund this new account with cryptocurrency.

Mr R set up an account with a well-known cryptocurrency exchange (which I'll call B). Between 10 February 2021 and 12 May 2021, he made four bank transfers from his Santander account to his account with B. He then purchased cryptocurrency and sent this onwards to D. Across these four payments he sent a total of £10,026.

Mr R was told his investment was doing well. But in August he attempted to withdraw funds and wasn't able to do so. He was unable to make contact with D.

He reported the matter as a scam to Santander. Santander didn't refund Mr R for what he'd lost. It was unable to recover any of the payments he'd made – Mr R had already used the funds to purchase cryptocurrency in the course of the scam.

The bank said Mr R had properly authorised each payment and it had no reason not to follow his instructions. That meant it wasn't liable to reimburse him. It also pointed out that it had shown him a pop-up warning message relevant to investment scams, recommending he should check the name of the company on the FCA website, which Mr R hadn't done.

Mr R didn't accept this and referred his complaint to this service for an impartial review. He had been in a difficult situation suffering from serious ill-health. He'd been on medication at the time of the scam which had led to drowsiness. The impact of what had happened had been significant.

Our Investigator looked into the complaint. The Investigator didn't think Santander had treated Mr R unfairly. The Investigator noted that Mr R was transferring money from his Santander account to an account he'd set up in his own name with B, and he'd set that account up with the intent of facilitating onward payments to D. That meant the APP scam

reimbursement code (the Contingent Reimbursement Model code or CRM Code) wouldn't apply, because the payment from Santander hadn't gone directly to another person.

The Investigator also didn't think it would have been apparent to Santander that the payments Mr R was making were connected to a scam, nor that they were significantly unusual for his account. So, the Investigator didn't think Santander could reasonably have been expected to intervene or take steps to warn Mr R more than it had. The Investigator didn't find Santander at fault and didn't require it to refund Mr R's losses.

Mr R didn't accept our Investigator's view. His complaint has been passed to me to reach a 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.

I'm sorry to hear about what happened to Mr R. I can understand entirely why he feels his money should be returned to him. He's been the victim of a crime here, and he's explained the significant impact that crime has had on him. I don't underestimate how difficult a situation this has left him in. He was deceived by a scam that led him to believe he was investing his money and making good profits. Mr R's now been left out of pocket by a significant sum as a result. So, I can appreciate why he'd now like Santander to refund him for what he lost, and why he wants the bank to take the blame for not stopping him at the time.

However, the main cause of these losses were the scammers who deceived Mr R. For me to say Santander is liable in this type of situation, I would need to find that the bank could and should have acted to prevent the eventual loss, or that it failed to meet its obligations in some other way.

A voluntary code does exist to provide additional protection against APP scams (the Contingent Reimbursement Model Code – CRM Code). Santander is a signatory to that voluntary code. But payments made to a customer's own accounts won't normally be covered by the CRM Code.

That matters because the account to which Mr R sent money from his Santander account was an account registered in his own name at B. He'd set this up and knew it was being used as a route to move his funds to D. Based on what I have seen, I find that the CRM Code provisions don't apply to Mr R's complaint about Santander.

However, while I therefore find the CRM Code does not apply here, that Code is not the full extent of the relevant obligations that could apply in cases such as this.

Under the relevant regulations, and in accordance with general banking terms and conditions, banks have a primary obligation to execute an authorised payment instruction without undue delay. As a consequence, the starting position is that liability for an authorised payment rests with the payer, even if they made that payment as the consequence of a fraud or scam - for example as part of an investment scam such as this was.

However, where the customer made the payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though the customer authorised the transactions. I consider that a bank also has a duty to take reasonable steps to protect its customers against the risk of fraud and scams.

In particular, I consider that as a matter of good industry practice Santander should have been looking out for payments or payment patterns that were significantly out of character or unusual and that might therefore be indicative of the potential for financial detriment to its customer through fraud or a scam.

What I need to consider here is whether the evidence supports a finding that Santander ought to have had significant concerns these transactions were indicative of possible financial harm through fraud or a scam – to the extent that this would have overcome its primary obligation to carry out Mr R's payment instructions.

Mr R was sending the payments an account or e-money wallet he held in his own name and which he had control over. Nonetheless, I consider that in some circumstances a payment request could reasonably have prompted sufficient concern from Santander that, as a matter of good industry practice, I'd have expected the bank to intervene before processing the instruction. But I think the perceived risk of such an instruction would be lower than a payment to an account held by a third party – all else being equal.

With all of the above in mind, I've thought carefully about whether the available evidence demonstrates that Santander did enough given the specific circumstances here.

Santander says it provided a general investment scam warning message, suggesting Mr R should check the details of the company he was investing with on the FCA's website (for which it provided a link). Of course, Santander could have provided an even stronger warning about the risks. But I can't fairly hold Santander liable for not providing Mr R with a stronger warning when there was no obligation on the bank to do so for transactions of this nature.

While I've carefully considered all the evidence and points raised by Mr R, and despite my natural sympathy for the impact this scam has had on him, I don't consider these payments, were so significantly unusual that I could find Santander at fault for not having taken further steps than it did.

I say that having reviewed the account history Santander has provided covering the previous twelve-month period. While the initial payment amounts of £3,000 were larger than prior payments, I don't find they were so significantly larger that Santander ought to have been concerned enough to think Mr R was about to fall victim to a scam. I find it relevant here that about a month elapsed between each payment – this wasn't a sequence of payments made in rapid succession. On the face of things these payments might equally have been simply investments in cryptocurrency, and unconnected to a fraud or scam.

And while Mr R has since explained about his health and circumstances at the time of the scam, nothing I've seen suggests that Santander would have been aware of this at that point (or ought reasonably to have been aware).

All things considered I don't think these payment requests were so remarkable or should otherwise have caused sufficient concern that I could find Santander at fault for not blocking them and intervening rather than fulfilling its primary obligation to carry out Mr R's instructions without delay.

Further, I am satisfied that when Santander was made aware of the scam, it took the appropriate actions. This included its attempts to recover Mr R's lost funds – however, Mr R had already moved these on from B in the course of the scam, so recovery was not possible.

Overall, I don't find Santander was at fault here. I can't fairly require Santander to refund these payments.

In saying this, I want to stress that I am very sorry to hear about what happened to Mr R and I am sorry he has lost out. As I've said earlier, Mr R was the victim of a crime and a cruel scam carefully designed to defraud him of his money. I appreciate that what he's lost here adds up to a significant sum. But it is simply the case that I don't find Santander was at fault in making these payments in line with the instructions he gave the bank at the time, and I don't find the bank liable to refund him for any other reason.

My final decision

For the reasons given above, I do not uphold Mr R's complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 October 2023.

Stephen Dickie
Ombudsman