

The complaint

Mr Q complains that Santander UK Plc (Santander) won't refund money he lost in an investment scam.

What happened

Mr Q is represented by a firm of solicitors, but I will refer to him as the complainant.

What Mr Q says:

Mr Q says he transferred £20,000 to two foreign beneficiaries (which I will call A and B) - for the purpose of the money being transferred into an investment fund (which I will call C). The payments were:

Date	Payment	Amount
15 November 2018	Online payment to A	£10,000 (fee £25)
15 November 2018	Online payment to B	£10,000 (fee £25)
3 February 2023	Payment received	(£10,000)
Total loss claimed		£10,050

Mr Q asked to withdraw the money from C and couldn't. He therefore lost all the money sent. He says he was an inexperienced investor. There had been a warning about C on the Financial Conduct Authority's (FCA) website on 06 July 2018. Santander should've been aware of that and stopped the payments. But they didn't. He says the payments were out of character for the way he used his account and Santander should refund the money, plus 8% per annum interest and compensation of £1,000.

What Santander said:

Mr Q originally reported the fraud to Santander in April 2019. At that time, Santander declined to refund the money as the payments were made by online banking, and were authorised by Mr Q. He authenticated the payments with a one-time passcode (OTP). They had tried to recover the money from the recipient bank, but without success.

Mr Q then complained to Santander in February 2023. Santander responded and maintained the same stance. They added that the payments weren't covered by the Authorised Push Payment Contingent Reimbursement Model Code (CRM Code) – as they were made before the Code was introduced on 28 May 2019.

Our investigation so far:

Mr Q brought his complaint to us and our investigator didn't uphold it. He said:

- During the investigation, Santander noticed that a refund of £10,000 had been received in February 2023. So – the loss was reduced by that amount.
- He didn't consider the payments were out of line with Mr Q's normal account activity – as he had made higher payments in the six months prior to the scam. Therefore, he didn't think it was reasonable to expect Santander to have intervened.
- Santander had tried to recover the funds – and while this was initially unsuccessful, £10,000 was credited back in 2023.

Mr Q asked that an ombudsman look at his complaint, and so it has come to me to make a final decision.

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'm sorry to hear that Mr Q has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr Q didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether Santander acted fairly and reasonably in its dealings with Mr Q when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it came into effect in May 2019 – after the payments in question.

The important matter here is whether these were payments that Santander might reasonably have considered unusual, and therefore whether they should've held or stopped the payments and contacted Mr Q about them.

I looked at Mr Q's account history. And I don't think the payments were unusual for him. There was a payment of £23,000 on 14 November 2018; and one for £12,087 in February 2018. But equally, I accept that the scam payments were to two new payees, and to overseas accounts.

But other than that, the payments didn't have the signs of a scam. For example, the payments didn't drain the account (there was £786 credit left), and neither were there a series of payments over a number of days – both would've caused Santander to have had concerns. And so, I consider that in the absence of any other scam indicators there wasn't enough going on here that Santander ought reasonably to have had concerns.

I also noted that that:

- Santander did stop one of the payments and provided an online scam warning to Mr Q and he confirmed he wanted to go ahead.
- He confirmed the payments using a OTP.
- We asked Mr Q for evidence of his losses, e.g. website screen shots, evidence of the trading account with C; evidence of funds received by C; correspondence with C, how the money was moved from A and B to C; what returns were promised. But unfortunately, I wasn't provided with any such evidence that I could be satisfied with.
- Mr Q argues that Santander should've been aware of the FCA's concerns about C – as the FCA website shows C as 'unauthorised' in July 2018 – before Mr Q's payments. I looked at the FCA website, and this was the case. So - I considered this point. And at that time, firms did have an obligation to flag such payments where they were made to known suspicious beneficiaries by credit or debit card. But in the case of Mr Q's complaint here – the payments were by online, faster payment and not by card, so that doesn't apply.
- Mr Q brought another complaint to us in connection with payments made from another bank, and it agreed to refund the payments made, without a decision from our service. But to be clear – we view each complaint separately and on its merits, and I have considered Mr Q's complaint about Santander accordingly.

Therefore, on the balance of evidence here, I don't consider it's reasonable to hold Santander liable to refund the money.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Santander took the necessary steps in contacting the bank that received the funds – in an effort to recover the money. Santander did that when Mr Q contacted them in April 2019, initially without any success. Given that the payments were made in November 2018, this wasn't a surprise – as normally in such scams, funds are removed from the recipient bank immediately.

But then, a refund was received in February 2023 – it must have been related to the scam as it has the same reference number as for one of the payments in November 2018. We asked Mr Q about his. He's unsure but wondered if it may have been a payment held by Santander between 2018 and 2023 – which I find odd. Santander said that couldn't have been the case. But in any event, the funds were credited to Mr Q – so his losses were reduced.

I'm sorry Mr Q has had to contact us in these circumstances. I accept he's been the victim of a cruel scam, but I can't reasonably hold Santander responsible for his loss.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 7 February 2024.

Martin Lord
Ombudsman