

The complaint

Mr T complains about Santander UK Plc.

He says that Santander didn't do enough to protect him when he became the victim of a scam and would like Santander to refund him the money he has lost as a result.

What happened

In 2021, Mr T was researching online for an investment opportunity. He joined a Facebook group discussing investments in cryptocurrency and was subsequently added to a Telegram group along with others who were discussing trades and providing support and guidance.

One of the participants in the group suggested Mr T open a crypto wallet with a provider and offered to help. Mr T was reassured as up to this point, he had made all the decisions himself, and so allowed this individual access to his crypto wallet key.

Mr T was persuaded to make payments to the wallet totalling £6,550, which were then used to buy crypto and transferred to other wallets. I have set out the payments below.

Date	Amount	Payee	Payment type
21 May 2021	£1,000	LT	Online transfer
24 May 2021	£1,000	LT	Online transfer
24 May 2021	£500	LT	Online transfer
24 May 2021	£500	LT	Online transfer
24 May 2021	£500	LT	Online transfer
24 May 2021	£1,000	LT	Online transfer
24 May 2021	£1,500	LT	Online transfer
24 May 2021	£550	LT	Online transfer
		Total	£6,550

Mr T then realised that he had been scammed and complained to Santander.

Santander refunded Mr T 50% off his loss, under the contingent reimbursement model (CRM).

Unhappy, Mr T brought his complaint to this Service. Our Investigator looked into things but didn't think that Santander needed to do any more than it had already done.

They explained that Santander had applied the CRM code to Mr T's complaint - but as the payments had been made to a crypto wallet in Mr T's own name which he had access to, then it didn't apply.

They also said that while they thought that Santander could have intervened from the fourth payment made on 24 May 2021 and refund him from this point, that Mr T had been negligent, and so applied a deduction of 50% to the refund due for contributory negligence. And as Santander had already refunded Mr T 50% of all the payments made, no further refund was due.

Mr T disagreed with this and asked for an ombudsman to make a decision. He says that Santander had already agreed that something went wrong by agreeing to refund 50% of the payments – and that as the Investigator said that Santander should have noticed something was amiss by the fourth payment on 24 May 2021, it could have stopped their payments.

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've decided that Santander doesn't need to do any more than it has already. I'll explain why.

It isn't in dispute here that Mr T has been the victim of a scam and has lost a significant amount of money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

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 having been good industry practice at the time.

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's fair and reasonable in this case.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having 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.

In this case, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr T when he authorised payments from his account or whether it could and should have done more before processing them.

Did Santander act fairly and reasonably in Mr T's case?

Having considered Mr T's transactions in the lead up to the scam taking place, similar to our Investigator, while the individual payments were not that unusual for Mr T's usual pattern of

spending, by the fourth payment he made on 24 May 2021, Mr T had spent £3,000 on crypto in a matter of days. However, unlike our Investigator, I think its unlikely that Santander needed to intervene here – the individual payments were still not that high, and although they were going to crypto, not every payment to crypto is as a result of a scam, That said, I don't need to make a finding here, because it doesn't make a difference based on what follows.

It may be that had this conversation taken place, then the scam could have been uncovered, and further loss prevented. However, I do also need to consider if Mr T did anything to mitigate his own losses too and if I need to apply contributory negligence here.

Mr T says that he was initially doing his own research on Facebook, before being contacted by an individual through this group and added to a Telegram group. He says that he did some research on YouTube and allowed the scammer to access his own crypto wallet too.

Taking this into account, I don't think that Mr T did enough to mitigate his own losses here. Santander's notes say that he said he didn't do any checks before paying for the crypto on the advice of someone he had never met and had no reason to trust. He also didn't read any of the scam warnings Santander provided at the time he was making the payments.

YouTube is also not an investment platform – and there is no regulation on the advice given. Mr T also gave an individual he had just met online access to his crypto account. And so, I feel that a reduction in award of 50% would be reasonable here.

This means that even if I was to say that Santander could have prevented Mr T's loss from this time, it has already paid Mr T more than I would award to settle his complaint, and I don't direct it to do anything further.

My final decision

I don't find that Santander UK Plc need do any more than it did already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 October 2023.

Claire Pugh
Ombudsman