

## **The complaint**

Mr K complains that Santander UK Plc (Santander) won't refund the money he lost when he fell victim to a scam.

## **What happened**

- Around July 2021, Mr K was introduced to a scammer via a friend on social media. He thought they were offering cryptocurrency investments. He sent three payments to C, a cryptocurrency exchange merchant who he would have needed to set up an account with, before transferring the funds on to the alleged trading platform.
- Initially, Mr K could access what appeared to be a trading platform – and saw he was making profits. But when he tried to make a withdrawal, he was told he could only do so if the account balance exceeded \$10,000. He then realised it was a scam.
- In August 2022, supported by a professional representative, Mr K complained to his bank, Santander. He said that, when he had made the payments from his Santander account to C, it failed to identify the payments as out of character.
- Santander didn't agree to refund Mr K, so he referred the matter to our service. Our investigator didn't think the payments looked unusual, or that Santander could have recovered the funds. So she didn't uphold the complaint.
- Mr K has appealed. In summary, his representative submits:
  - Santander should apply the standards of the Lending Standards Board's Contingent Reimbursement Model (CRM) code;
  - The largest payment (around £2,000) was unusual – and if Santander had intervened in response to this risk, it would have uncovered the scam; and
  - The investigator's argument around recovery through the chargeback scheme is irrelevant and should be disregarded.

### **• 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 agree with the conclusions of the investigator for these reasons:

- Mr K's contact records persuade me he fell victim to a scam. But it is agreed he authorised these payments. In line with the Payment Service Regulations 2017, banks are expected to execute authorised payment instructions without undue delay. So the starting position under the regulations is that Mr K is liable for the payments.

- There are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. But I’m not persuaded Santander’s anti-fraud systems ought to have identified the payments Mr K has disputed as uncharacteristic and indicative of fraud.
- The payments didn’t go direct to the scammer; they went to a legitimate intermediary. The individual amounts didn’t look concerning and were spread out with gaps of a few days in between. All of that made the payments appear less suspicious.
- While the largest payment was just over £2,000, I don’t think that amount – within Mr K’s account activity – was so large or otherwise unusual that Santander had cause to be concerned about fraud. This wasn’t the first time Mr K was paying the recipient, and there had been previous payments (including a card payment) for a similar, or higher, amount in the months leading up to the scam.
- Mr K’s representative has referred to the CRM code. But that doesn’t apply here the code doesn’t cover card payments or me-to-me payments. The payments I’m considering here were both, as the funds were paid, by card, direct to Mr K’s account with C. So the CRM code isn’t a relevant consideration in this case – as I’d expect Mr K’s professional representative to be well aware of.
- It doesn’t appear Mr K ever raised a chargeback claim, nor that he complained to Santander about one. In any event, as the investigator explained, there wouldn’t have been a realistic prospect of recovering the funds through this scheme. It would only consider a dispute against C, as the merchant paid direct, whereas Mr K’s dispute is about the platform he transferred the funds on to.

I appreciate this will be disappointing to Mr K, who has clearly lost out to a cruel scam. But in the circumstances, I’m not persuaded it’s fair to hold Santander liable for his loss or otherwise compensate him in relation to this complaint.

### **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 K to accept or reject my decision before 11 October 2023.

Rachel Loughlin  
**Ombudsman**