

The complaint

Mr and Mrs L have complained that Santander UK Plc won't refund all the money they lost to a third-party scam.

Although this is a joint account, it was Mr L that fell victim to the scam – so I have referred to him throughout this decision.

What happened

I'm not going to cover all the points raised in detail. The view of 27 September 2023 covered the detailed timeline of the transactions and the details of Mr L's testimony. But briefly Mr L fell victim to a cryptocurrency investment scam. After initially investing and being led to believe he was making a profit, Mr L was told he needed to make more payments due to various issues with the withdrawal process.

Santander refunded 50% of all the payments, as it accepted that it could have provided more effective warnings. However, it deducted 50% as it feels Mr L should be held responsible for not carrying out enough checks or any due diligence to check the company was genuine. Our investigator did not uphold the complaint as she thought the offer already made by Santander was fair.

Mr L did not agree. He felt Santander should share more of the responsibility.

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.

It's not in dispute that the funds were lost to a scam. It's also not in dispute that Mr L authorised the payments from his account, albeit not realising he was being scammed. So, the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transactions.

However, there are circumstances where it might be appropriate for Santander, to take additional steps or make additional checks before processing a payment to help protect its customers from the possibility of financial harm from fraud. In such circumstances, it might be reasonable to expect Santander to intervene and ask some questions about the intended transactions before processing them.

I don't need to consider whether Santander should have done more – as it has already accepted responsibility for its part. I just need to consider whether it was fair and reasonable for it to deduct 50% of the payments Mr L made.

Having done so, while I'm sorry that Mr L has been the victim of a cruel scam, I agree with the conclusions reached by the investigator for these reasons:

- Mr L reacted to an advert online and accepts to some extent he didn't do sufficient research and relied on how genuine the adviser sounded.
- I do feel there were signs that that Mr L ought reasonably to have been concerned about. On 11 August 2022 Mr L received an email from the genuine cryptocurrency provider asking if he tried to log on from a new device or location. Mr L told the scammer on 12 August 2022 he didn't recognise the location or the six-digit code. The genuine cryptocurrency provider invited him to call its customer services. I think it would have been prudent for Mr L to do so.
- I do feel by the time Mr L made the £10,000 payment on 13 September 2022 there were further signs that things weren't quite right. Communications on 5 September 2022 suggest Mr L was getting concerned as he had not heard from his 'adviser' for over two weeks and the link to the website he had been using had stopped working. There was clearly doubt in Mr L's mind at this point that the whole thing could be a 'set up'. And whilst the 'adviser' came back to him with a new link, Mr L clearly had an awareness of 'scam merchants' and that he'd been fortunate up to now not to have been 'fleeced'. Given this was a possibility - all of this warranted further checking.
- By September 2022 Mr L was receiving emails from what appeared to be another third-party organisation to inform him he needed to pay further money to release his funds. However, these emails had grammatical errors and don't appear to be from a genuine organization. I think the situation warranted closer scrutiny.
- If Mr L had researched the company, he would have found it wasn't registered on Companies' House and that a different business was registered under the same address. I think this would have caused concern.

I appreciate Mr L feels Santander should be more than 50% responsible for his losses but for the reasons explained above I feel the 50% deduction Santander has made is fair and reasonable in all the circumstances of this complaint. I think it's also worth noting that these payments went to an account in Mr L's own name – rather than directly to the scammer – so would not have appeared so obviously a scam risk compared to transactions that went directly to a new unknown payee.

As the investigator mentioned in her view - I would normally expect Santander to have paid interest from the date of the transactions to when it settled the matter (which was around six weeks after the scam was unearthed). But as the investigator also pointed out – I would not uphold the first three transactions here and so overall Santander has refunded more than I would award in a case like this. I therefore make no further award.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 29 November 2023.

Kathryn Milne
Ombudsman