

## The complaint

Mr H complains that Santander UK Plc didn't do enough to protect him from the financial harm caused by an investment scam company, or to help him recover the money once he'd reported the scam.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr H was searching online for investment opportunities when he came across a company I'll refer to as "I". He engaged with "I" via Whatsapp and was told he could easily make over £100 a week. The broker asked him to first purchase cryptocurrency through a cryptocurrency exchange company and then load the cryptocurrency onto an online wallet.

Between 30 March 2021 and 28 April 2021, Mr H made ten payments to two cryptocurrency exchange companies totalling £108,549.97 using a Visa debit card connected to his Santander account. On 30 March 2021, he tried to pay £20,529.08 and £3221.89 to a cryptocurrency exchange I'll refer to as "M". The payment was released following a call during which there was no scam warning.

On 14 April 2021, he tried to pay £15,000 to a different exchange which I'll refer to as "B". The payment was flagged for checks and during the call, Mr H said he wasn't buying cryptocurrency. The call handler warned him about the prevalence of scams, in response to which he explained the funds would go into his blockchain wallet before being released to make trades on the stock market. The call handler also read the following warning before releasing the payment: *"If you did receive a cold call about an investment opportunity or if you haven't checked the company you're investing with, this could be a scam. We recommend checking company details on the FCA website if you are suspicious about who you're paying, you shouldn't continue with the payment."*

There were further interventions on 15 April 2021, 26 April 2021 and 28 April 2021. On 26 April 2021, there were two calls during which Mr H mentions his broker and the payment is released without any questions about the broker. On 28 April 2021, the call handler checked Mr H had control of the cryptocurrency wallet, that he wasn't using a third party or a broker and that he hadn't been told what to say to the bank.

Mr H realised he was the victim of a scam when he contacted the broker to say blockchain wouldn't release his funds and he didn't receive a response. He contacted Santander to tell it he'd fallen victim to a scam and to ask for a refund of the money he'd lost. He said it had failed to confirm that the recipient bank account was in the correct name, identify that the investment platforms weren't genuine and recognise that the payee had unmatching and suspicious details.

Santander said the debit card transactions dated between 13 April 2021 and 28 April 2021 were requested and authorised by Mr H and had required additional authentication through its mobile banking application. The transactions were blocked due to security concerns and

Mr H had said he'd completed checks, was happy the transactions were genuine, and wished to proceed. It said the £25,000 payment to B was initially declined and Mr H was given relevant scam warnings in response to which he said the payment was genuine and he wished to proceed.

It said he was unable to raise a chargeback request because the payments were to an account in Mr H's own name, apologising this was not made clear at the outset and offering £100 compensation. It also said the payments weren't covered under the Contingent Reimbursement Model ("CRM") code and it had contacted the receiving bank who confirmed that no funds remained.

Mr H wasn't satisfied and so he complained to this service. He said Santander had failed to protect his interests and had allowed payments to fraudulent companies. He said it failed to confirm the recipient bank account was in the correct name, and to identify that the investment platform wasn't a registered company. He said he wasn't happy with £100 compensation as Santander failed to manage his expectations, and its response times were prolonged.

He said Santander had failed to investigate the first two payments of £3,221.89 and £20,528.08, and he believes it failed to provide adequate protection and safeguarding measures required by checking the payee details.

His representative said he had no previous experience of investing, he wasn't an expert, and he'd trusted the scammers because they presented as genuine investment platforms with experienced and reliable agents. They said Mr H was vulnerable and it was unreasonable to expect him to have protected himself.

The representative said it was Santander's duty to establish transactional data and customer behaviour analytics to identify high-risk payments and the numerous large payments to unregulated foreign investment companies should have been flagged for further checks. And that its failure to provide effective warnings, which were neither impactful, timely or specific meant Mr H was unable to implement the actions he should have taken to address the risk.

Our investigator didn't think the complaint should be upheld. She was satisfied "I" was operating a scam and that Mr H had authorised all the payments. She was also satisfied the payments were unusual when compared to Mr H's general account activity. But she noted Mr H had gone ahead with the investment even though Santander had intervened.

She noted it failed to provide a scam warning during the call that took place on 30 March 2021. And she thought Santander should have queried what Mr H said about his broker during the call on 26 April 2021, and that its failure to do so represented a missed opportunity. But she didn't think an earlier warning or more probing questions would have made a difference.

This is because she was satisfied Mr H had been coached to deny the involvement of a third-party, so Santander couldn't reasonably have identified this as a scam. So, while she thought Santander should have given an earlier scam warning and asked more questions during the call on 26 April 2021, she didn't think it would have made any difference.

She explained there were no prospects of a successful chargeback claim because the cryptocurrency exchange companies had provided the services as intended. And the CRM Code wouldn't apply because the disputed payments were card payments and transfers into accounts in Mr H's name. She also explained that there was no prospect of a successful recovery because Mr H had transferred the funds out of the account himself.

Finally, our investigator explained Santander had paid Mr H £100 compensation in recognition of customer service issues and delays and she was satisfied that was fair because when Mr H reported the scam, there was little it could do to recover the money.

Mr H has asked for the complaint to be reviewed by an Ombudsman. His representative has said the warnings were generic and not enough to prevent him from going ahead with the transactions. They said the payments were for unusually large sums to unusual destinations which was completely out of character and Mr H's assurance that the investment was genuine was meaningless because that was what he genuinely believed.

### **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 reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr H has been the victim of a cruel scam. I know he feels strongly about this complaint, and this will come as a disappointment to him, so I'll explain why.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr H has fallen victim to, in all but a limited number of circumstances. Santander has said the CRM code didn't apply in this case because the payments were to an account in Mr H's own name, and I'm satisfied that's fair.

I'm satisfied Mr H 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, he is presumed liable for the loss in the first instance.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I've carefully considered the circumstances, and I'm persuaded the broker was operating as part of a scam. This is because on 21 October 2021, a warning about "I" was placed on the Financial Conduct Authority (FCA) website and on 26 October 2021 a warning was published on the International Organisation of Securities Commissions ("IOSCO") website. Further, there are several reports in the public domain—e.g. foreign press and online forums—stating that "I" were scammers.

But, although Mr H didn't intend his money to go to scammers, he did authorise the disputed payments. Santander is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

### ***Prevention***

I've thought about whether Santander could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, Santander had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have done more to warn Mr H when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect it to intervene with a view to protecting Mr H from financial harm due to fraud.

I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr H normally ran his account and I think they were because although the payments were to legitimate cryptocurrency exchange companies, they were for significantly large amounts, which was out of character for the usual spending on the account. Santander did intervene at the points I would expect it to, so the issue for me to consider is whether it did enough during the calls.

Having listened to the calls, I'm satisfied Mr H was asked robust questions around the purpose of the payments. Santander failed to provide a scam warning during the call on 30 March 2021, but it did provide warnings during later calls which didn't make a difference and so I don't think an earlier warning would have made a difference.

I agree with our investigator that Santander should have asked more questions during the call on 26 April 2021. She didn't think more probing questions would have made any difference because Mr H was coached to deny the involvement of a third party. But while he did deny the involvement of a third party on 28 April 2021, he clearly mentioned the broker on 26 April 2021, so I need to consider what might have happened had the call handler examined this further.

If Santander had asked more questions on 26 April 2021, based on the fact he'd volunteered the information, I think Mr H would most likely have said he was following the advice of a broker who he'd come across online. And with this information, I'd expect the call handler to have told Mr H there were red flags present, before giving a full scam warning and advising him how to check the investment was genuine.

But Mr H clearly trusted the broker, he hadn't been promised unrealistic returns and this was a sophisticated scam. And at the time he made the payments, there were no warnings on either the FCA or IOSCO websites to confirm this was a scam and I haven't seen any evidence of negative reviews, so even if Santander had done more during the call on 26 April 2021 and Mr H had followed advice to do more checks, I don't think it would have made a difference to his decision to go ahead with the payments.

### *Chargeback*

I've thought about whether Santander could have done more to recover Mr H's payments when she reported the scam to it. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Santander) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr H).

Mr H's own testimony supports that he used cryptocurrency exchanges to facilitate the transfers. It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the cryptocurrency exchanges would have been able

to evidence they'd done what was asked of them. That is, in exchange for Mr H's payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined fail.

### *Compensation*

Santander has offered Mr H £100 compensation for customer service issues that arose after he complained to it. I've considered the circumstances, in particular the impact of its failure to manage his expectations around the prospects of a successful chargeback claim, and I'm satisfied £100 is fair.

Overall, I'm sorry to hear Mr H has lost money and the effect this has had on him. But for the reasons I've explained, while I think Santander could have done more, I don't think this represented a failure to intervene in circumstances that would have prevented his loss and so I can't fairly tell it to do anything further to resolve this complaint.

### **My final decision**

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 October 2023.

Carolyn Bonnell  
**Ombudsman**