

The complaint

Mr M complains that Santander UK Plc (Santander) won't refund money he lost in a scam.

What happened

What Mr M says:

In February 2023, Mr M was contacted via WhatsApp by someone purporting to be from a recruitment firm – she asked if he was interested in earning up to £700 per week. Mr M checked the recruitment firm on Companies House and LinkedIn and thought the opportunity was genuine.

He was then contacted by another person and was introduced to a scheme whereby he had to send money to a crypto wallet, and then onto a bitcoin trading firm. He could then generate data for a retail consumer website by agreeing to buy goods up to the value of his crypto investment. The funds were then to be returned to his bank account when the goods were sold to a consumer.

Mr M made a payment from his account with Santander on 6 March 2023:

Date	Payment	Amount
6 March 2023	Faster payment to crypto wallet in name of Mr M	£2,300
Total		£2,300

No money was repaid and he was asked to put in another £23,000 in order to receive the funds. He became suspicious and then realised he had been scammed.

Mr M contacted Santander to advise them of the scam and to ask for a refund.

What Santander said:

Santander didn't uphold Mr M's claim or his complaint. They said:

- Mr M authorised the payment.
- The payment was made to an account in his own name and therefore the Contingent Reimbursement Model (CRM) code didn't apply.
- Santander said to us that the payment was sent to an intermediary bank before the loss occurred in the bitcoin trading platform.

Our investigation so far:

Mr M brought his complaint to us. Our investigator didn't uphold it. He said:

- The payment wasn't of a sufficient size to trigger a warning in Santander's systems.
- So, Santander didn't need to intervene and question the payment.
- Santander contacted the receiving bank, but the money had been removed.

Mr M 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 M 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 M 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.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary – and in this case, the payments were made to Mr M's own account – his crypto 'wallet'.

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

I looked at Mr M's account. It appears to be an account that he used for everyday spending and to receive his income. There were two payments of over £1,000 in the months leading up to the scam payment – in December 2022, there was a payment for £1,000 and another in January 2023 for £1,250. So – the payment for £2,300 to Mr M's crypto account was a little unusual, so I considered this further.

And here, there's a balance to be struck; Santander has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments.

And - this was a single payment and for a relatively low amount. Therefore, in this case, I think Santander acted reasonably in processing the payment – I don't think that I could reasonably say that Santander should have stopped the payment for further checks.

This is the important point here in reaching my decision. And therefore, I don't consider Santander can be held liable for the payment.

Even though our investigator didn't uphold Mr M's complaint, Santander made some further comments and quoted the Supreme Court's binding decision in *Philipp v Barclays Bank plc*. I make no comment on that decision, or Santander's points relating to it – as my decision to not uphold this complaint is based on the amount of the payment made by Mr M, and does not refer to the Supreme Court's decision. So – I set that aside.

Recovery

We expect firms to quickly try 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 – to recover the lost money. I could see that they'd contacted the provider of Mr M's crypto wallet – and on 24 March 2023, were advised that no funds remained. Unfortunately, that is generally the case in these types of scams, and funds are usually removed within minutes, or hours of their receipt.

I'm sorry Mr M 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 M to accept or reject my decision before 16 January 2024.

Martin Lord
Ombudsman