

The complaint

Mr S complains that Santander UK Plc (Santander) is refusing to refund him the amount he lost as the result of a scam.

Mr S is being represented by a third party. To keep things simple, I will refer to Mr S throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr S came across what he thought to be a well-known YouTuber and investor's Instagram page. It later turned out to be a fake page setup as part of a scam. I will call the scammer "X".

Mr S contacted X and started to discuss investments via google hangouts. On X's direction Mr S created an account with the cryptocurrency exchange Coinbase and signed up to a website sent to him by X (ultraboostertrade.com)

Mr S has told us that the process seemed very professional and legitimate and he started to make payments into investments from this and another of his accounts held at another bank. Trades were placed automatically, and Mr S could see he was making a significant return.

The balance on Mr S's trading account showed around £250,000.00 and he decided to make a withdrawal. However, after making the request he was asked to make a further payment. He discussed the request with X, who he had come to trust, and X confirmed this was standard practice. So, Mr S made the payment.

Mr S's funds were still not sent to him following the payment being made and further payments were requested again. Mr S discussed the situation with his partner who advised him not to make any further payments.

Mr S made the following payments into the scam via the cryptocurrency exchange Coinbase:

Date	Payee	Payment Method	Amount
24 May 2022	Coinbase	Transfer	£4,250
25 May 2022	Coinbase	Debit Card	£1,000
30 May 2022	Coinbase	Transfer	£15,000
31 May 2022	Coinbase	Transfer	£1,000
1 June 2022	Coinbase	Debit Card	£1,000
7 June 2022	Coinbase	Transfer	£40,000

Unfortunately, Mr S has not been able to recover the funds he lost to this scam.

Soon after making the final payment to X Mr S was contacted by a business impersonating Santander. I will call the person "Y". Y explained that Mr S's account with Santander had

been compromised and he needed to move his funds to a safe account.

Under the instruction of Y Mr S made the following transfers:

Date	Payee	Payment Method	Amount
24 June 2022	Individual person	Transfer	£4,976
24 June 2022	Individual person	Transfer	£6,550
24 June 2022	Individual person	Transfer	£4,650
25 June 2022	Individual person	Transfer	£4,400

Unfortunately, it turned out Y was not calling from Santander and Mr S had moved his funds to the scammer.

When Mr S raised the scams with Santander it didn't offer any refund for the payments made in relation to the first scam but did refund 50% of the payments Mr S made to the second scam.

Our Investigator considered Mr S's complaint but didn't think it should be upheld. Mr S disagreed so this complaint has been passed to me to decide.

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 has not been disputed that Mr S has fallen victim to cruel scams. The evidence provided by both Mr S and Santander sets out what happened. What is in dispute is whether Santander should refund the money Mr S lost due to the scams.

Recovering the payments Mr S made

In the first scam Mr S made payments via both transfer and his debit card.

When payments are made by card the only recovery option Santander has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr S was dealing with X, which was the person that instigated the scam. But Mr S didn't make the debit card payments to X directly, he paid a separate cryptocurrency exchange (Coinbase). This is important because Santander would only have been able to process chargeback claims against the merchant he paid (Coinbase), not another party (such as X). The service provided by Coinbase would have been to convert or facilitate conversion of Mr S's payments into cryptocurrency. Therefore, Coinbase provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr S paid.

When funds are sent via transfer Santander has limited options available to it to recover the payment. In this situation Mr S made the payments to an account held in his name at Coinbase and then moved these funds to X. So, if Santander had requested the funds be returned from X this would not have been possible as they had already been moved on.

I have considered if Mr S should have received a refund under the Contingent Reimbursement Model (CRM) code. But the CRM code only applies when domestic payments (as the result of a scam) are sent to another person. Here Mr S sent the payments to an account held in his own name and the scam occurred when he moved his purchased crypto from that account to the scammer. I'm satisfied the CRM code wouldn't apply in this scenario.

For the second scam Mr S made payments via the method of transfer. As I've said above when this payment method is used Santander has limited options available to it to recover the payments. I can see that Santander requested a refund from the receiving bank, but these funds had already been moved on.

Given the above I am satisfied Santander was unable to recover the payments sent in relation to the second scam.

Should Santander have reasonably prevented the payments Mr S made?

It has been accepted that Mr S authorised the payments that were made from his account with Santander, albeit on X and Y's instruction. So, the starting point here is that Mr S is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Santander should have been aware of the scams and stepped in and questioned Mr S about the payments he was making. And if it had questioned Mr S, would it have been able to prevent the scam taking place.

For payments made in relation to the first scam Mr S was making large payments which I think were unusual enough when compared with his usual spending to have reasonably triggered Santander's fraud prevention systems, prompting it to step in and question Mr S about the payments he was making. However, even if Santander had stepped in, I think it's unlikely the scam would have been uncovered and prevented.

I say this because although a conversation with Santander may have prompted Mr S to do further research about the investment there was little information if any available about it available in the public domain at the time of the scam. Mr S has also explained that when he did have concerns and raised them with X, X was able to reassure him of the legitimacy of the investment. It is clear Mr S trusted X and was willing to proceed with further payments once he had been reassured by him.

So, overall, while I think Santander could have done more, I don't think this would have made a difference and it is not responsible for Mr S's loss in relation to the first scam.

In the second scam Mr S was making payments to a third party in relation to a scam. I think these payments should be covered under the CRM code and Mr S should receive a refund for them.

Did Mr S contribute to his loss?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

I have already said Mr S should receive a refund for the payments he made in relation to the second scam in line with the CRM code. But I do think Mr S contributed to his loss. Mr S received communication from someone pretending to be from Santander. He didn't carry out any checks before agreeing to make transfers from his accounts. In addition to this he was asked to make transfers to accounts in other people's names. I think this should have been a red flag to Mr S and he should have carried out checks to make sure these payment requests were genuine.

In the circumstances I think Santander has acted fairly reducing Mr S's compensation amount by 50%.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 February 2024.

Terry Woodham
Ombudsman