

The complaint

Mr A complains that Santander UK Plc ("Santander") have failed to refund the money he lost as part of an investment scam.

Mr A has a representative but for ease of reading I will mainly just refer to Mr A.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision.

In summary though, Mr A found an advert for a trading platform that I will call B. Mr A made a number of debit card payments and faster payments to a crypto exchange totalling over £130,000 between May and July 2021. My understanding is that the funds were converted to crypto and then sent on to B.

Mr A asked Santander to refund these payments as he believes Santander should have done more to prevent him from being scammed. Santander did not agree with this.

One of investigators looked into this matter and he did not think there was sufficient evidence to demonstrate that Santander had intervened appropriately earlier in the scam. That said, based on the answers that Mr A provided in a later call with Santander in June 2021, he did not think that an earlier intervention would've stopped the scam.

Mr A did not agree with this and therefore his complaint has been passed to me to issue a 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons.

It isn't in dispute that Mr A authorised the disputed payments he made from his Santander account. The payments were requested by him using his legitimate security credentials provided by Santander, and the starting position is that Santander ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether Santander should have done more to prevent Mr A from falling victim to the scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transaction. For example, if it was particularly out of character.

I agree with the investigator that there is insufficient evidence to demonstrate that Santander intervened appropriately earlier in the scam. I can see that there were phone calls on 22 May 2021, 25 June 2021 and 26 June 2021 but we do not know what was said so I can't say that appropriate questions were asked during these calls.

Given this, I need to consider whether an appropriate intervention would have stopped the scam. In this instance I have considered the answers that Mr A gave during a phone call between him and Santander on 29 June 2021.

I have listened to the call that was made. Amongst other things Mr A said the following;

- He was not following a third parties' advice and was acting alone after his own research
- The funds that he was transferring to the crypto exchange would be staying on the platform and would not be transferred on

This is despite him being involved with a third party who was trading on his behalf, he was also following their advice and that he was transferring his funds from the crypto exchanges to B.

So had Santander intervened earlier, I am not satisfied that Santander would have been given information that would have led it to believe that Mr A was being scammed or that would have led it to make more than a general warning about the dangers of crypto investing. Mr A was given a general warning during the above call about the dangers of crypto investing and he was told that scammers often try and persuade people to transfer funds from crypto exchanges, but he carried on despite this.

I note Mr A's representative has explained that an intervention earlier in the scam would have had a greater effect on Mr A's actions. I have carefully thought about this but in this specific instance given the answers that Mr A gave later in the scam I think it likely that he would've given similar answers earlier in the scam. This would have meant that any warning Santander could have reasonably given him would not have been specific to the exact scam Mr A was caught up in and would be more like the general warning he was given, which had not effect on Mr A's actions. So given this I am not satisfied that an earlier intervention would have stopped the scam.

I've also thought about whether Santander could have done more to recover the funds after Mr A reported the fraud, as in some circumstances the money can be recovered.

In this instance the debit card payments could potentially have been recovered by a chargeback. But in this case, a chargeback would not have been successful, as the transactions Mr A used his debit card for was to pay crypto exchanges for the purchase of cryptocurrency, which he duly received. It was only when the cryptocurrency was transferred from his crypto wallets to the scammer did the loss then occur. So, he could not claim that he did not receive the goods or services paid for from his Santander account, which was the purchase of the cryptocurrency.

In relation to the transfers Santander are also under no obligation to refund the money to Mr A under the Contingent Reimbursement Model (CRM) Code either, as the Code does not apply to transfers which the payer has effectively made to themselves.

I appreciate this will likely come as a disappointment to Mr A, and I'm sorry to hear he have been the victim of a cruel scam. However, I'm not persuaded that Santander can fairly or reasonably be held liable for his loss in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 February 2024.

Charlie Newton
Ombudsman