

The complaint

Mr N complains that Starling Bank Limited (Starling) is refusing to refund him the amount he lost as the result of a scam.

Mr N is being represented by a third party. To keep things simple, I will refer to Mr N 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 N was contacted by six different investment companies (Solidinvest, Financial Residential, Adams Darby, Qubix and SWCXH) and was in communication with them from 2020-2022. Mr N communicated with each of the investment companies through email, phone calls and WhatsApp but never met in person. Each investment company initially came across professional and legitimate.

Mr N carried out online searches before investing with each company and didn't find anything that caused him concern.

Throughout the investment process Mr N had access to trading platforms, sent personal identification documents and enabled access to his device via the screen sharing application AnyDesk.

On each occasion Mr N realised he had fallen victim to a scam when he was unable to make a withdrawal from the investment.

Mr N made the following payments in relation to the scams from his Starling bank account using his debit card online:

| Date | Payee | Scam | Amount |
|-------------------|-------------------|-----------------------|-----------|
| 25 January 2021 | Moonpay | Financial Residential | £3,763.65 |
| 11 August 2021 | Moonpay.io | Coin X21 | £1,884.76 |
| 11 August 2021 | Moonpay Gbp | Coin X21 | £383.38 |
| 11 August 2021 | Moonpay Gbp | Coin X21 | £1,080.46 |
| 11 August 2021 | Moonpay Gbp | Coin X21 | £1,080.43 |
| 12 August 2021 | Moonpay.io | Coin X21 | £2,146.45 |
| 12 August 2021 | Moonpay.io | Coin X21 | £2,146.45 |
| 24 August 2021 | Binance | Unitrade FX | £2,000.00 |
| 10 September 2021 | Buy Digital Asset | SWXCH.COM | £764.75 |
| 13 September 2021 | Buy Digital Asset | Qubix | £3,687.70 |
| 14 September 2021 | Moonpay.io | Coin X21 | £3,780.13 |
| 5 October 2021 | Binance | Unitrade FX | £1,000.00 |
| 5 October 2021 | Binance | Unitrade FX | £3,500.00 |
| 6 October 2021 | Binance | Unitrade FX | £4,500.00 |
| 11 October 2021 | Switchhere | SWXCH.COM | £852.44 |

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|------------------|-------------------|-------------|-----------|
| 11 October 2021 | Switchhere | SWXCH.COM | £980.31 |
| 11 October 2021 | Switchhere | SWXCH.COM | £745.89 |
| 15 October 2021 | Binance | SWXCH.COM | £700.00 |
| 18 October 2021 | Switchhere | SWXCH.COM | £850.04 |
| 18 October 2021 | Switchhere | SWXCH.COM | £977.54 |
| 20 October 2021 | Binance | SWXCH.COM | £9,500.00 |
| 20 October 2021 | Binance | SWXCH.COM | £9,300.00 |
| 27 October 2021 | Buy Digital Asset | Qubix | £4,440.87 |
| 11 November 2021 | Binance | Unitrade FX | £5,000.00 |
| 11 November 2021 | Binance | Unitrade FX | £5,000.00 |
| 25 November 2021 | Binance | Unitrade FX | £5,000.00 |
| 25 November 2021 | Binance | Unitrade FX | £5,000.00 |
| 25 November 2021 | Binance | Unitrade FX | £5,000.00 |

Our Investigator considered Mr N's complaint but didn't think it should be upheld. Mr N 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 N has fallen victim to cruel scams. The evidence provided by both Mr N and Starling sets out what happened. What is in dispute is whether Starling should refund the money Mr N lost due to the scams.

Recovering the payments Mr N made

Mr N made payments into the scams via his debit card. When payments are made by card the only recovery option Starling 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 N was dealing with the scammers, which were the businesses that instigated the scams. But Mr N didn't make the debit card payments to the scammers directly, he paid separate cryptocurrency exchanges. This is important because Starling would only have been able to process chargeback claims against the merchants he paid (the cryptocurrency exchanges), not another party (such as the scammers).

The service provided by the exchanges would have been to convert or facilitate conversion of Mr N's payments into cryptocurrency. Therefore, they provided the service that was requested; that being the purchase of the cryptocurrency.

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

Should Starling have reasonably prevented the payments Mr N made?

It has been accepted that Mr N authorised the payments that were made from his account with Starling, albeit on the scammers' instruction. So, the starting point here is that Mr N 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 Starling should have been aware of the scams and stepped into question Mr N about the payments he was making. And if it had questioned Mr N, would it have been able to prevent the scams taking place.

Mr N was making payments from his Starling bank account to genuine legitimate businesses. Mr N had also made payments in relation to crypto in the months leading up to the payments he made in relation to the scams. So, I don't think it's unreasonable that the lower payments of a value below £5,000 didn't trigger Starling's fraud prevention systems prompting it to step in.

However, on 20 October 2021 Mr N made two much larger payments each to the value of over £9,000. I think the first of these payments should have triggered Starling's fraud prevention systems prompting it to question Mr N about the payments he was making. But even if it did this, I don't think it would have made a difference.

By the time I think Starling should have stepped in Mr N had been investing with several businesses for more than 9 months. Mr N had also knowingly been scammed several times before and was still choosing to invest with businesses that contacted him in similar ways about similar investments.

From the evidence provided about this case I can see that Mr N told the scammers over WhatsApp that he was being scammed and asked several times to withdraw funds, and even though he didn't receive the withdrawals Mr N continued to make additional payments.

Mr N was quite clearly upset that one of the scammers had used AnyDesk to carry out tasks without his approval and deleted the application before complaining to the scammer. Yet Mr N continued to make payments in relation to this same scam.

One of the scammers was also quite rude to Mr N and threatened to leave, I think this should have been a major red flag to Mr N, but again Mr N continued to make further payments.

Overall, I think Starling should have stepped in and warned Mr N that he may be experiencing a scam when he attempted the larger payments. But I don't think this would have made a difference. There were so many red flags during these scams that Mr N clearly recognised, yet he continued to invest and make further payments. I think had Starling intervened, it's most likely Mr N would have continued to make the payments. Any warning would likely have just told Mr N something he already knew i.e. he did not need to have been warned that it could be a scam as he already seemed to suspect this. Therefore, I can't say Starling missed an opportunity to prevent the scam, and it is not responsible for Mr N's loss.

My final decision

I don't uphold this complaint.

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

Terry Woodham
Ombudsman