

The complaint

Miss H complains that Santander UK Plc (Santander) is refusing to refund her the amount she lost as the result of a scam.

Miss H is being represented by a third party. To keep things simple, I will refer to Miss H 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, Miss H was interested in investing and saw an advert for an investment business called Cuarto.Capital (X) on YouTube. Miss H spoke to X and was persuaded to start investing with it. As part of the investment process Miss H was required to download the remote access software AnyDesk which X used to help her with the trades.

Miss H initially started investing by making a small payment before being convinced to make further payments on the promise of greater returns.

After seeing she had made a profit on the investment Miss H attempted to make a withdrawal but was told she would have to make a payment in relation to tax. Miss H questioned the payment request explaining to X that she made her tax payments to HMRC.

However, after receiving a credit from X to help her with the tax related payment she made a further payment to it.

Miss H continued to communicate with X but having received several excuses from X was still unable to make a withdrawal. Eventually Miss H was no longer able to communicate with X and it was clear she had fallen victim to a scam.

Miss H made the following payments in relation to the scam:

<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
15 March 2023	Coinbase	Debit Card	£1,000
21 March 2023	Coinbase	SEPA International	£1,496.70 (+£25 fee)
22 March 2023	Coinbase	Credit	- £1,397.90
23 March 2023	Blockchain	Debit Card	£1,200
19 April 2023	Individual	Credit	- £820
24 April 2023	Blockchain	Debit Card	£1,200

Our Investigator considered Miss H's complaint and didn't think it should be upheld. Miss H 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 Miss H has fallen victim to a cruel scam. The evidence provided by both Miss H and Santander sets out what happened. However, even when a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

Recovering the payments Miss H made

Miss H made payments into the scam via her debit card and one international payment.

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.

Miss H was dealing with the scammer, which was the business that instigated the scam. But Miss H didn't make the debit card payments to the scammer directly, she paid separate cryptocurrency exchanges. This is important because Santander was only able to process chargeback claims against the merchants she paid, not another party.

The service provided by the cryptocurrency exchanges would have been to convert or facilitate conversion of Miss H'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 scammer – doesn't give rise to a valid chargeback claim against the merchants Miss H paid. As the cryptocurrency exchange provided the requested service to Miss H any chargeback attempt would likely fail.

Miss H also made a payment into the scam via the method of international payment. When payments are made using this method Santander has limited options available to it to seek recovery. However, this payment was returned by the legitimate cryptocurrency exchange Coinbase. While the amount returned differed slightly, and Miss H has raised concerns about this, I think the difference likely related to a change in exchange rates and potential fees. Santander has confirmed it has not made any deductions from the payment received into Miss H's account.

Considering the above payment was returned I don't think Santander should need to do anything more to recover it, and with the above in mind, I don't think Santander had any recovery options available to it for the payments Miss H made.

Should Santander have reasonably prevented the payments Miss H made?

Miss H authorised the payments that were made from her account with Santander, albeit on X's instruction. So, the starting point here is that Miss H is responsible.

Miss H has argued that Santander did not adhere to the standards it should have in protecting her from the scam.

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 scam and intervened when Miss H made the payments. And if it had intervened, would it have been able to prevent the scam taking place.

The payments Miss H made in relation to the scam were not of a significant value and were made to legitimate businesses. So, I would not have expected the payments themselves to have triggered Santander's fraud prevention systems prompting it to intervene.

However, I can see from the information available, that Santander did stop some payments Miss H attempted and these were not processed. Although these payments were also low value, I think it could be argued that Santander should have intervened before allowing further payments to go through after these payments were stopped.

Had Santander intervened I would have expected it to, at most, have explained to Miss H that it had concerns about the payments she was making and that she should research X before making further payments. But I don't think this would have made a difference.

Miss H has explained she carried out her own research on X before investing and was confident the investment was legitimate from the outset. Miss H has also explained that she did start to have her own concerns about X but chose to proceed with further payments anyway. I am also aware that Miss H's credit card provider was not happy making a payment she had attempted in relation to the scam so instead she did a money transfer – so I think this shows she was determined to make the payment despite another payment service provider having concerns with it.

When Miss H asked X why she needed to make payments through e-wallets she was told that the banks asked too many questions, and this was the fastest way.

Miss H was told she would have to make a payment in relation to tax before a profit could be withdrawn. Miss H told X that she made her tax payments to HMRC and clearly understood this was the correct method. Miss H also says she had further concerns and questioned if X was based in the UK as it had told her it was. However, she later received a credit from X to help with the payment and made a further payment as requested.

Miss H says she would not have made the payments had Santander intervened. But based on what I've outlined above I think it's clear that Miss H recognised the risks associated with the payments she was making and questioned the legitimacy of the investment she was paying into yet continued to make payments anyway. I don't think a warning from Santander would have stopped Miss H making the payments and it is therefore not responsible for her loss.

My final decision

I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 7 June 2024.

Terry Woodham
Ombudsman