

## **The complaint**

Mr and Mrs W complain that Santander UK Plc (Santander) is refusing to refund them the amount they lost as the result of a scam.

Mr and Mrs W are being represented by a third party. To keep things simple, I will refer to Mr and Mrs W 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, Mrs W has told us that she saw a post on Instagram from a friend (X) that she knows is experienced in finance. The post referred to an investment he had made. Interested in investing Mrs W contacted X for his advice.

X explained how easy the investment was and that he used a broker called Swift Expert Trader (Y). While the commission level was 20% of any profit, X explained this was usual for this type of investment.

Mrs W contacted X's mentor (Z) via a separate Instagram account. Z explained how the investment worked which included Mrs W opening a separate account with a different provider so that cryptocurrency could be purchased.

Mrs W made payments into the investment and paid the commission on her profit upfront as she was advised withdrawals would be easier that way. But Mrs W tells us she had concerns which she raised with X. X comforted Mrs W, but she tells us she also raised concerns with Z who asked Mrs W if she was accusing it of being a scammer and laughed at the possibility.

Mrs W was asked to make a payment to what appeared to be a personal account which caused her concerns, so she went to contact X via Instagram and found a second account in his name. Mrs W was able to speak to X who told Mrs W that his account had been hacked and that others had lost money as a result.

Mrs W did further research and found more details about the scammer using the bank details that had been provided and information from another person that had been scammed in the same way. This information was passed to action fraud to help with any investigation.

Mrs W has explained that she received a very poor service when she tried to claim through Santander for the money that she lost. While I won't go into every situation in detail Mrs W has told us she was given various contacts at Santander to deal with, promises were not kept, incorrect information was given, information was lost, delays were caused and at one point she was even asked to attend an appointment at a branch, but when she arrived an appointment had not been made, and she was not expected by the staff.

Mrs W made the following payments from her Santander account in relation to the scam:

Date	Payee	Payment Method	Amount
9 April 23	Mrs W Revolut	Apple Pay, Card	£500
10 April 23	Mrs W Revolut	Transfer	£1,650
10 April 23	Mrs W Revolut	Transfer	£2,600
10 April 23	Mrs W Revolut	Transfer	£1,700
11 April 23	Mrs W Revolut	Transfer	£100
11 April 23	Mrs W Revolut	Transfer	£5,000
11 April 23	Mrs W Revolut	Transfer	£50

Our Investigator considered Mrs W's complaint and while she didn't think Santander should be held responsible for the money Mrs W lost, she did think the customer service Mrs W experienced was below what she should have expected. Our Investigator said the compensation in relation to the service received should be increased from £50 offered by Santander to £100.

Santander agreed with our Investigator's findings. Mr and Mrs W didn't agree, 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 isn't in dispute here that Mrs W has been the victim of a scam and that Mr and Mrs W have lost money as a result. However, even when a scam has taken place, and individuals have been tricked out of their money, it doesn't necessarily follow that the business will need to refund the money that has been lost.

#### *Recovering the payments Mrs W made*

Mrs W made payments in relation to the scam via her debit card via apple pay and transfer. 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.

As the payment Mrs W made via apple pay went to an account in her own name and not a third-party, chargeback would not be an option available to Santander to seek recovery.

When payments are made by transfer Santander could ask the operator of the receiving party's account to refund any funds that remain within that account. But Mrs W was making the payments to an account in her name, so if any funds did remain, they would remain within her control.

With the above in mind, I don't think Santander had any reasonable options available to it to recover the payments Mrs W made in relation to the scam from her Santander account.

#### *Should Santander have reasonably prevented the payments Mrs W made?*

It has been accepted that Mrs W authorised the payments that were made from her account with Santander, albeit on the scammer's instruction. So, the starting point here is that Mrs W 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 scam and intervened when Mrs W made the payments. And if it had intervened, would it have been able to prevent the scam taking place.

The payments Mrs W made from her Santander account were going to another account in her name and weren't for a significant value. However, Santander did step in on one occasion. I can see the questions it asked online and the answers that Mrs W provided.

Mrs W confirmed she was investing in cryptocurrency, the investment was within the UK, she had carried out the checks it had recommended, no one had had access to her device, and she was happy to make the payment.

Mrs W was given the following warnings when attempting this payment:

**"Warning-**

**It's important to check.**

*Always thoroughly check an investment out yourself to make sure it's not a scam. You should only go ahead with it if you're confident it's not. "*

**"Warning-**

**Cryptocurrency/bitcoin**

*This could be a scam. Most of the crypto/bitcoin scams we see involve somebody else helping you, or having access to or control of any of your devices, accounts or wallets. If this has happened, or is happening now, it will be a scam. "*

**"Warning-**

**Take care**

*This could still be a scam. Many cryptocurrency investments are not authorised by the FCA. Proceed very cautiously with unregulated companies.*

*Don't continue with this payment if any of the following apply. Pressure to invest (e.g. time-limited offers). A promise of low risk with high returns. An offer that sounds too good to be true.*

*You've been told how to set this payment up or withhold information from the bank. Criminals make something sound safe or tempting with high returns in an attempt to get their victims to let their guard down.*

*Research using different sources to spot things that don't seem right, even if you're using a trading platform."*

**"Warning-**

**"Protect your money**

*It's your responsibility to understand the details of what you're investing in and complete sufficient checks before proceeding. If you don't fully understand, stop and don't send your money. Even legitimate-sounding investment can sometimes turn out to be scams. Before proceeding, you need to be sure it's not a scam."*

**"Warning-**

**Complete these checks**

*Here are the checks you must complete before you send any money. Use the FCS's ScamSmart tool to make sure the company you're investing with is registered AND to make sure there isn't a warning of a cloned or fake company."*

Considering the types of payment Mrs W was making I think the intervention that took place including the displayed warnings was proportionate and I think it should have raised red flags with Mrs W.

Although Mrs W tells us nobody had access to her device, she has also said there was a red dot on the screen at times which appear to allow the scammer to view the screen. Mrs W has also told us she felt pressure to make payments in a timely manner and she was told how to setup the payment, opening a new account elsewhere to facilitate payments into the investment itself.

Despite receiving the above information Mrs W continued and made the payment. I don't think Mrs W would have acted differently had Santander given her the same warnings on future payments and therefore it is not responsible for Mr and Mrs W's loss.

The service Mrs W received when attempting to make a claim with Santander was below the standard she should have expected and while I acknowledge Santander did offer to pay £50 compensation in relation to this, I think our Investigator's suggestion to increase this amount to £100 is fair. I appreciate Mrs W feels this amount is too low but having reviewed all the information available I won't be asking Santander to increase this amount.

**Putting things right**

I require Santander UK Plc to pay Mr and Mrs W £100 compensation in relation to the substandard service it provided to Mrs W.

**My final decision**

I uphold this complaint and require Santander UK Plc to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 28 June 2024.

Terry Woodham  
**Ombudsman**