

The complaint

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

Mr A is being represented by a third party. To keep things simple, I will refer to Mr A 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 A tells us that he received a message via WhatsApp from an individual (X) who appeared to have messaged him in error. X apologised for messaging Mr A and over the days that followed Mr A and X exchanged messages which helped form what Mr A believed was a new friendship.

After speaking for some time and building trust between them X started to discuss how she had successfully invested in cryptocurrency and offered to help Mr A do the same. Mr A says he initially declined the opportunity but eventually agreed as he trusted X.

Mr A was advised to open a cryptocurrency account and was shown a professional looking trading platform with all the key features Mr A would have expected from a genuine platform.

Mr A made payments into the scam as directed by X from his Santander account and accounts he held elsewhere, and was advised to open by X.

Mr A says he made the payments from his Santander account and other accounts he held elsewhere having been directed by X and on the belief that he could make a withdrawal any time. X also helped Mr A by making deposits into his trading account.

Having made what appeared to be a significant profit Mr A attempted to make a withdrawal but tells us he was unable to due to "suspicious activity" on his account with money being sent from X's account.

Mr A said he tried to explain the situation but was told he would have to deposit more funds. Mr A then realised he had fallen victim to a scam.

Mr A made the following payments in relation to the scam from his Santander account:

<u>Payment</u>	<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
1	3 October 2023	Coinbase	Transfer	£100
2	5 October 2023	Coinbase	Transfer	£800
3	7 October 2023	Coinbase	Transfer	£50
4	7 October 2023	Coinbase	Transfer	£20
5	7 October 2023	Coinbase	Transfer	£20
6	30 October 2023	Kucoin	Debit Card	£2,300

7	31 October 2023	Kucoin	Debit Card	£295
8	2 November 2023	Kucoin	Debit Card	£1,600
9	13 November 2023	Kucoin	Debit Card	£2,500

Our Investigator considered Mr A's complaint and didn't think it should be upheld. Mr A 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.

The evidence provided by both Mr A and Santander sets out what happened. What is in dispute is whether Santander should refund the money Mr A lost due to the scam.

Recovering the payments Mr A made

Mr A made payments into the scam via his debit card 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.

Mr A was dealing with X, which was the person that instigated the scam. But Mr A didn't make the debit card payments to the scammers directly, he paid a separate cryptocurrency exchange. This is important because Santander was only able to process chargeback claims against the merchant he paid, not another party.

The service provided by the cryptocurrency exchange would have been to convert or facilitate conversion of Mr A's payments into cryptocurrency. Therefore, it 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 merchant Mr A paid. As the service was provided to Mr A any chargeback attempt would likely fail.

When payments are made by transfer Santander has limited options available to it to seek recovery. It could contact the operator of the recipient's account and ask for any funds that remained, but Mr A has already told us that the cryptocurrency was forwarded as part of the scam so no funds would remain to be recovered.

With the above in mind, I don't think Santander had any reasonable options available to it to seek recovery of the payments Mr A made in relation to the scam from his Santander account.

Should Santander have reasonably prevented the payments Mr A made?

It has been accepted that Mr A authorised the payments that were made from his account with Santander, albeit on X's instruction. So, the starting point here is that Mr A 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 Mr A made the payments. And if it had intervened, would it have been able to prevent the scam taking place.

Santander has told us that it did not consider the payments Mr A made from his account as unusual. But even if I was to say Santander should have intervened, I don't think it would have made a difference.

I say this because when Mr A made payments in relation to the scam from another of his accounts he held elsewhere, several interventions took place.

Mr A was consistently dishonest when he answered the questions asked by his other account provider. Mr A gave incorrect reasons for the payments and went on to explain that the payments were in relation to paying for materials for his company. Mr A also said he was not being guided through how to answer questions asked when he was making the payments and had not downloaded any software.

Mr A has told us that he deleted a lot of the conversations from the time of the scam, so it has not been possible to know exactly what was said between himself and X, but from the information available I think it is clear Mr A was being guided by X on how to make the payments. I think it's most likely that even if Santander had carried out interventions, that Mr A would not have given more honest answers or explained why he was really making the payments.

Being dishonest with Santander had it intervened would have made it very difficult for Santander to uncover the scam that was taking place. I don't think it would be reasonable to say Santander was in a position to uncover the scam, or that it should be held responsible for Mr A'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 A to accept or reject my decision before 20 December 2024.

Terry Woodham
Ombudsman