

The complaint

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

Mr T is being represented by a third party. To keep things simple, I will refer to Mr T 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 T came across an advert on Facebook for the business "Prestige Financial Markets" (X) specialising in investments. The advertisement grabbed Mr T's attention by offering a small initial investment start-up fee. Interested in the opportunity Mr T clicked on the link and filled in his contact details.

Mr T then received a call from X who explained the investment opportunity which included investing in popular well-known brands Mr T was aware of. The investment appeared genuine, and Mr T was advised to open an account with X via its website and had to provide identification documents to do so. Mr T was then able to see live information via his account.

X's website appeared professional with all the features he would expect from a site of this nature. Mr T was further advised to download the remote access software AnyDesk so X could walk him through the website.

Mr T tells us that before making any payments into the investment he carried out his own checks to make sure it was genuine. Mr T also spoke to his financial advisor who also checked X and told Mr T that X looked genuine.

Mr T could see his investment was growing and after making a small withdrawal (which boosted his confidence in X) continued to make payments into the investment as instructed by X, taking out several loans to fund the payments.

X later explained to Mr T that a huge trading opportunity was coming up and that he should put all his funds into it. Mr T trusted X and agreed. However, after he sent the funds his account showed they had been lost over night.

X explained Mr T had lost the money due to a bad trade. However, Mr T was contacted again requesting further payment to recover the money he had lost, and it became clear Mr T had fallen victim to a scam.

Mr T made the following payments into the scam:

Date	Payee	Payment Method	Amount
31 July 2018	Skrill Eur	Debit Card	£228.66
1 August 2018	Tct Usd	Debit Card	£2,360.51

23 August 2018	Skrill Eur	Debit Card	£46,250.04
25 September 2018	All Pro Tech Ou	Transfer	£50,000.00
25 September 2018	All Pro Tech Ou	Transfer	£49,000.00
25 September 2018	All Pro Tech Ou	Transfer	£38,000.00
27 September 2018	Skrill	Credit	- £890.09
24 October 2018	All Pro Tech Ou	Transfer	£50,000.00
24 October 2018	All Pro Tech Ou	Transfer	£20,000.00
26 October 2018	All Pro Tech Ou	Transfer	£3,000.00
29 October 2018	All Pro Tech Ou	Transfer	£50,000.00
29 October 2018	All Pro Tech Ou	Transfer	£50,000.00
29 October 2018	All Pro Tech Ou	Transfer	£50,000.00
29 October 2018	All Pro Tech Ou	Transfer	£50,000.00

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

Recovering the payments Mr T made

Mr T made payments into the scam via his debit card and the method of 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.

Unfortunately, Mr T made his complaint to Santander outside of the allowed time to raise a chargeback and therefore Santander is not able to attempt a chargeback for the payments Mr T made into the scam using his card.

When payments are made by the method of transfer the only option Santander has to recover the payments is to request a refund of any amount remaining in the payee's bank account. Considering the time between Mr T making the payments and when he made his complaint, I think it's highly unlikely any funds would remain.

I am satisfied that Santander had no reasonable options available to it to recover the payments Mr T made in relation to the scam.

I have also considered whether Mr T should receive a refund for the payments he made into the scam under the Contingent Reimbursement Model (CRM) Code. But this wouldn't be an option for Mr T as the code didn't come into effect until 28 May 2019 which is after all the payments made in relation to the scam.

Should Santander have reasonably prevented the payments Mr T made?

It has been accepted that Mr T authorised the payments that were made from his account with Santander, albeit on X's instruction. So, the starting point here is that Mr T 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 stepped into question Mr T about the payments he was making. And if it had questioned Mr T, would it have been able to prevent the scam taking place.

The first two payments Mr T made in relation to the scam were for relatively low values, so I am not surprised these payments didn't trigger Santander's fraud prevention systems prompting it to step in and question Mr T about them. However, the third and further payments Mr T made were for substantial values, often being made in the same day, so I think it would be reasonable to expect Santander to have had concerns and questioned Mr T about them.

Santander has shown that it stepped in on at least two occasions and calls between Mr T and Santander took place. Recordings of only one of these calls are available and it took place on 25 September 2018.

I think Santander could have asked Mr T further questions during this call, but Mr T still confirmed he had invested with X previously and withdrawn funds, he also confirmed he had carried out research on X and so had his financial advisor, and that X was genuine.

Santander also explained the risks of some scams, and that scams often included giving remote access of the customer's device to the scammer. Although Mr T had given X access to his device via AnyDesk he did not tell Santander this on the call.

In addition to the above Mr T tells us he took out several loans to fund the investment and on the advice of X gave false information to the loan providers on each occasion, stating the purpose of the loans was for home improvements.

From what I have seen I think it's clear that Mr T trusted X and was willing to give incorrect information to financial institutions to fund and make the investments. I don't think any further questioning from Santander would have prevented the scam taking place.

Mr T has argued that a warning about X was on the FCA website part way through the scam process and that had Santander advised him to check the site any further loss would have been prevented. But like I said above, Mr T trusted X and he had told Santander that both he and his financial advisor had already checked the legitimacy of X. I don't think any further advice to check the FCA website would have prompted Mr T to make further checks as he had already taken the advice of his own financial advisor who had told him X looked legitimate.

With the above in mind, I don't think Santander missed an opportunity to prevent the scam, and it is not responsible for Mr T'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 T to accept or reject my decision before 12 April 2024.

Terry Woodham
Ombudsman