

The complaint

Mr P complains that Santander UK Plc did not do enough to recover the money he paid to an investment scam company.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

- Around August 2019, Mr P saw an investment opportunity advertised by Gurvin Singh of GS3 Trading.
- Gurvin Singh persuaded him to invest with a company called Infinox Capital ('Infinox'). Mr P invested a total of £37,500 between August 2019 – October 2019 with Infinox (£10,500 of these funds were sent to a company called KTAFX.com which Mr P believed was an affiliate of Infinox).
- Mr P was initially told by Gurvin Singh that he could withdraw his money at any time but was subsequently told that he had to wait a period of 90 days from the opening of his account before he could do so.
- Mr P's trading account was performing well so towards the end of November 2019, Mr P made a request to withdraw £46,345.70 from it. This request was acknowledged and agreed by Infinox but was subsequently cancelled by them.
- By 24 December 2019 most of the funds in Mr P's trading account were lost.
- Mr P disputed the transactions to KTAFX.com and Infinox with Santander and requested that it process chargebacks for him. He presented Santander with information to evidence that Infinox didn't honour his withdrawal requests, that he was misled about the investment opportunity and that he was scammed.

Santander processed chargeback claims for all the disputed transactions and the claims were partially successful. KTAFX.com didn't defend Santander's pre-arbitration chargeback claims so £10,500 was refunded to Mr P in February 2020. Infinox's bank defended Santander's chargeback claims at its pre-arbitration stage and Santander concluded it had very little prospect of success should it escalate the claims to Visa's final stage of arbitration, so it decided not to. Santander recognised that it didn't provide some of the correct chargeback process time limits to Mr P and credited his account with £30 by way of an apology. Unhappy with Santander's response, Mr P referred his complaint to this service. One of our investigators didn't think Mr P met the Visa scheme rule requirements by presenting the necessary evidence, so he didn't think Santander should refund the remaining disputed amount. Mr P asked for an ombudsman to review his case, so it has been passed to me.

I wrote to Santander to ask why it didn't consider Mr P's email from Infinox dated 2 December 2019 relevant. In this email, Infinox acknowledged Mr P's withdrawal request of £46,345.70 and confirmed the funds would be paid to him within five working days. I asked why it didn't consider processing a chargeback under the 'reason code' specified for matters relating to problems with withdrawals from investment trading accounts. I also explained that

Visa had confirmed this evidence was sufficient in processing a valid chargeback claim under this specific reason code. Santander replied that it didn't think Mr P presented the required evidence of this particular reason code and in its past experience, when the necessary evidence wasn't provided, Visa would deem the claim 'invalid' at its final stage of arbitration.

Having considered Santander's additional information, I wrote back to them explaining I was minded to uphold Mr P's complaint because I did think he presented the required evidence for his claim to have succeeded under this more appropriate reason code.

I discussed my provisional outcome with Mr P and he confirmed he accepted it.

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.

Chargeback is a voluntary scheme run by Visa whereby they will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of each scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Santander) acted fairly and reasonably when presenting (or choosing not to present) a chargeback claim on behalf of its cardholder.

Mr P is upset because Santander refused to progress his chargeback claims further than it did. In my judgment, I don't think Santander acted unreasonably by not escalating Mr P's claims to Visa's arbitration stage. But this is because it stood no reasonable prospect of success by using what I consider to have been an inappropriate reason code based on the evidence supplied by Mr P. I think Santander would have stood a better prospect of success had it used a more appropriate reason code.

I'll begin with my considerations against the Visa chargeback scheme rules. I am mindful that the Visa chargeback rules did cover binary-options (or investment) trading from 14 October 2017, i.e. after the disputed transactions: see *Visa Business News*, 26 October 2017:

Effective 14 October 2017, issuers may use Reason Code 53 to address cases whereby a binary options (or forex) merchant has imposed obstacles to prevent cardholders from withdrawing funds. This chargeback right is limited to the amount available in the binary option account at the time funds are requested. Issuers cannot charge back more than the original transaction amount, so capital gains from binary options trades cannot be paid out via the chargeback process.

However, Reason Code 53 (later re-coded by Visa to 13.5) required Santander to present evidence that Mr P had an available balance and that he tried to withdraw sums equal to, or less than, his available balances on the same day. However, Visa required evidence in the form of a dated screenshot on the day the withdrawal was requested. Visa clarified to this service that it would consider a dated acknowledgment from the merchant advising the withdrawal request will be processed, and includes the amount of the request, as sufficient to support the chargeback for 13.5 and an additional screen shot would not be required if this information was presented.

Santander took the decision to process Mr P's chargeback claims under reason code 13.3 (services not as described). For claims under this reason code to have succeeded at Visa's final stage of arbitration, Santander would have needed to provide evidence that Infinox

made written representations to Mr P guaranteeing an amount of profit/return he was due to receive. It's clear this evidence was not available.

We know that KTAFX.com didn't defend Santander's chargeback claims at Visa's pre-arbitration stage, so Mr P's claims succeeded on this basis. But when Infinox's bank defended the chargeback claims under reason code 13.3, Santander was correct to conclude that it didn't have any prospect of success at arbitration.

However, I'm satisfied Mr P presented Santander with sufficient evidence for a claim under reason code 13.5 to have likely succeeded at Visa's final stage of arbitration. This reason code covered scenarios where merchants placed obstacles in the way of cardholders withdrawing their available balances. This was the crux of Mr P's complaint about Infinox to Santander. And so, when Mr P provided Santander with an email dated 2 December 2019 from Infinox acknowledging his withdrawal request (for the available balances in his trading account totalling £46,345.70) and confirming the funds would be paid within five working days, Santander ought to have processed Mr P's chargeback claims under reason code 13.5, not 13.3.

I don't dispute that Santander tried to assist Mr P given his claim that he fell victim to an investment scam. But Santander are the experts when it comes to chargeback, not Mr P. If Santander were unsure of the most appropriate reason code to use given the information provided by Mr P, it could have taken advice from Visa directly, I don't see that it did. I think if it had presented Mr P's chargeback claims to Infinox's bank differently and under a more appropriate reason code, these claims, on balance, would have succeeded. And it's unlikely that Infinox could have defended the claims when it had agreed to honour Mr P's withdrawal request in writing. In any event, Santander would have had the option to take the claims to Visa's final stage of arbitration, because it had the necessary evidence to do so. It's now too late for Santander to process chargeback claims under a more appropriate reason code, not least because it can only use one reason code to process chargeback claims and it used what I consider to have been the wrong one. In my view, Santander's decision significantly impacted Mr P's prospect of success in recovering his money.

My final decision

For the reasons set out above, I have decided to uphold this complaint. I therefore require Santander UK Plc to refund Mr P's remaining disputed transactions paid to Infinox (totalling £27,000).

The funds originated from Mr P's savings account, so Santander should add interest to that sum (less any tax properly deductible) at the interest rate of the savings pot (account) the funds originated from, from the date it declined the chargeback claims to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 January 2022.

Dolores Njemanze
Ombudsman