

Complaint

Mr R is unhappy with Santander UK Plc's decision to close his account and return money that he says was sent to him in connection with the sale of cryptocurrency.

Background

Mr R had an account with Santander. He says that in January 2021 he agreed to sell Bitcoin. He agreed with a purchaser that contacted him via a cryptocurrency platform that they would transfer sterling into his Santander account and that he would transfer the Bitcoin to them. He asked the purchaser to provide him with photographic ID, proof of address and a written statement showing that the transfer was in connection with the purchase of Bitcoin. He received two payments into his account for £175 and £110 respectively and so he duly transferred the Bitcoin to the intended recipient.

Shortly afterwards, the person who had sent him these funds complained to their bank that they'd fallen victim to an authorised push payment (APP) scam. They said that they'd been looking to take out a loan and been taken in by an 'advance fee' fraud. The sending bank reported this allegation to Santander. Santander agreed to return the funds to the sending account. The payment into Mr R's account had therefore been reversed, but there was no similar way to unwind the transfer of Bitcoin that Mr R had executed. As far as Mr R was concerned, he'd lost the Bitcoin and the money that was supposed to pay for it. At the same time, Santander reviewed Mr R's account and decided it didn't want to continue offering him banking facilities. It gave him 60 days' notice of its intention to close his account.

Mr R was unhappy with this. He complained to Santander, but it was satisfied that it had done the right thing. Mr R referred his complaint to this service. It was looked at by an Adjudicator who upheld it. The Adjudicator said that Santander was entitled to close Mr R's account. She said that it was the bank's decision whether it wants to continue offering an account to a customer.

However, she thought Mr R had provided credible evidence showing that he was entitled to the funds that had been transferred into his account and that they were in connection with the sale of Bitcoin. The Adjudicator didn't think that it was fair for Santander to have sent these funds back to the sending account. She recommended that it refund those payments to Mr R and pay him £100 in recognition of the inconvenience it had caused him.

Santander disagreed with the Adjudicator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've come to the same conclusion as the Adjudicator and for broadly the same reasons. Santander opted to close the account and gave Mr R 60 days' notice of its intention to do so. As a rule, a bank is free to decide whether it's willing to continue offering an account to a customer, so long as it does so fairly and in line with the terms and conditions of the account. Santander was therefore entitled to withdraw Mr R's banking facilities. It gave a reasonable notice period so as to allow Mr R to find a bank account elsewhere. Overall, I'm satisfied that it didn't treat Mr R unfairly when it closed his account.

However, I'm concerned with the way in which it handled the return of the funds that were paid into Mr R's account. The CRM Code says that after receiving notification of concerns from a sending bank a receiving bank should respond in accordance with the procedures set out in the Best Practice Standards. The Best Practice Standards produced by UK Finance in October 2017 set out standards for sending and receiving banks to follow when processing a claim for an authorised push payment scam like this one.

It sets out several relevant principles:

- The sending bank should notify their customer that because they authorised the transaction, the right to the funds is with the recipient. And that the outcome will depend on the receiving firm's investigation and whether any funds remain.
- The receiving bank will need to find evidence that the recipient has obtained the funds fraudulently.
- Following the receiving firm's investigation, identified funds should always be repatriated back to the sending firm at the risk of the receiving firm, subject to various exceptions. One of these exceptions is where there is a credible complaint or dispute from the recipient of the funds.

So, whilst the normal practice is that fraudulent funds are returned to the sending bank this isn't always the case. The receiving bank should investigate whether its customer received the funds fraudulently and if this isn't the case there is no obligation to return them.

In this instance, I think there was a risk that Mr R was the victim of a scam. The evidence he's provided suggests that he'd reached an agreement to transfer Bitcoin on receipt of a payment into his account. If the allegation that these payments were fraudulent was made in bad faith, Mr R will have lost both his cryptocurrency and the money he received for it.

From the evidence it has provided to me, Santander hasn't carried out any investigation into whether Mr R has received fraudulent funds. The allegation made by the holder of the sending account seems to have been taken at face value. Santander has said that Mr R was in receipt of multiple credits from third parties for the sale of the Bitcoin and that, as he doesn't know the people sending him money, he can't know where the money originates. It argues that he's taking a risk by accepting funds of unknown origin into his account.

While I accept that, as Mr R was transacting with strangers on the cryptocurrency platform, there was inevitably uncertainty regarding the origin of the funds. But that doesn't mean that he wasn't the innocent recipient of those funds. Santander has also said that Mr R has not *"provided compelling evidence that the [sending bank's] customer sent to the funds to him legitimately and the he went on to 'sell' on the crypto platform."* But the evidence Mr R has submitted shows that an informal agreement was reached between him and an individual who contacted him via that platform. It was agreed that Mr R would take payment for Bitcoin via a bank transfer. It's true that Mr R hasn't been able to demonstrate that he sent that Bitcoin to a blockchain address genuinely controlled by the person who sent him the payments. Unfortunately, there is no way for him to prove that either way.

Overall, I'm not persuaded that Santander did enough to satisfy itself that Mr R hadn't received these payments in good faith and so I don't think it should've repatriated the funds to the sending account. I've also considered the inconvenience that has been caused to Mr R. The Adjudicator recommended it pay him £100 in recognition of that and I'm satisfied that represents fair compensation in this case.

Final decision

For the reasons I've explained above, I uphold this complaint.

Santander UK Plc should now pay Mr R:

- £285 to represent the money that was returned to the sending account; and
- £100 in recognition of the inconvenience that was caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 November 2022.

James Kimmitt
Ombudsman