

The complaint

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

Mr B is being represented by a third party. To keep things simple, I will refer to Mr B 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 B was speaking to his cousin who was making a profit investing with a company called Voytegon (X). Having looked at the information available through his cousin Mr B expressed his interest in investing too and his information was passed onto X.

X called Mr B and explained how the investment worked including that X would be paid by way of a commission. Mr B then downloaded a trading app onto his phone as directed by X and created an account, providing identification documents as requested.

Mr B tells us he was convinced the investment was genuine as he could see his cousin was making a profit doing the same thing.

Mr B started to make investments with help from X using the screensharing application AnyDesk. Mr B's funds were first sent to genuine cryptocurrency exchanges before being forwarded to X.

After making several payments to X and being able to see he had made a profit X tried to get Mr B to make further payments into the investment. But When Mr B told X he didn't want to invest further X told Mr B he would have to close the account and pay fees to withdraw his profits. After paying the fees X had requested Mr B was asked to make further payments which he declined. X then stopped communicating with Mr B and it was clear he had fallen victim to a scam.

Mr B made the following payments into the scam via genuine cryptocurrency exchanges:

Date	Payee	Payment Method	Amount
19 January 2022	SwissBorg	Transfer	£1000.00
25 January 2022	Credit	Transfer	- £8.16
27 January 2022	SwissBorg	Transfer	£9,000.00
1 February 2022	Credit	Transfer	- £411.58
3 March 2022	SwissBorg	Transfer	£5,000.00
7 March 2022	Credit	Transfer	- £4,487.40
8 March 2022	CEX Io Ltd	Transfer	£3,000.00
9 March 2022	CEX Io Ltd	Debit Card	£2,061.65
30 March 2022	CEX Io Ltd	Transfer	£4,600.00
7 April 2022	CEX Io Ltd	Transfer	£400.00

12 April 2022	CEX lo Ltd	Transfer	£4,700.00
---------------	------------	----------	-----------

Santander agreed to refund the payments Mr B made to CEX lo Ltd by transfer inline with the CRM code less 50% as it thought Mr B should have done more to protect himself.

Our Investigator upheld Mr B's complaint in part, he said Santander had acted fairly by refunding 50% of the payments it had, but that it should also refund 50% of the remaining payments less the first payment Mr B made on 19 January 2022 for £1,000.

Santander 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 B has fallen victim to a cruel scam. The evidence provided by both Mr B and Santander sets out what happened. What is in dispute is whether Santander should refund the money Mr B lost due to the scam.

Recovering the payments Mr B made

Payments were made into the scam via the methods of 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 B was dealing with X, which was the business that instigated the scam. But Mr B didn't make the debit card payment to X directly, he paid a separate cryptocurrency exchange (CEX lo Ltd). This is important because Santander would only have been able to process chargeback claims against the merchant he paid (CEX lo Ltd), not another party (such as X).

The service provided by CEX lo Ltd would have been to convert or facilitate conversion of Mr B's payment into cryptocurrency. Therefore, CEX lo Ltd provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr B paid.

When a payment is made by transfer Santander has even fewer options available for recovery. As the payments sent by transfer were sent to accounts in Mr B's name before being moved on, I think it's unlikely Santander would have been able to recover the funds from the receiving banks.

I understand Santander has investigated this complaint inline with the CRM code. But the CRM code only applies when domestic payments (as the result of a scam) are sent to another person. Here Mr B sent payments to accounts held in his own name. And the scam occurred when funds were moved from those accounts to the scammer. I'm satisfied the

CRM Code wouldn't apply in this scenario.

With the above in mind, I don't think Santander had any recovery options available to it for the payments Mr B made.

Should Santander have reasonably prevented the payments Mr B made?

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

The first payment made into the scam was for the value of £1,000 and although this was to a new payee, it was to a legitimate business and for a reasonably low value. So, I don't think it was unreasonable that this payment didn't trigger Santander's fraud prevention systems prompting it to step in.

The second payment Mr B made into the scam was for £9,000. The value of this payment was significant and out of keeping with the way Mr B operated his account and so I think this payment should have triggered Santander's fraud prevention system, prompting it to step in and question Mr B about the payment he was making.

I can see that Santander did step in when Mr B attempted to make the same payment the day before and a conversation between Mr B and Santander took place. Santander has provided a copy of this call to us.

During this call Santander tells Mr B that the call is to help protect him from scams. Mr B tells Santander he was trying to make a payment of £9,000 to buy bitcoin and that he was nervous about making it as he hadn't made such a large payment before.

Mr B told Santander that he had discussed the investment with his wife, and she had said it sounds too good to be true, but he knows people that have done the same investment and been okay.

Santander gave a brief warning about how scams work. In response to this Mr B told Santander that he was investing with X, that the advisor was in Switzerland, and he wasn't sure if it was a scam. Mr B says he could go onto X's forum and see figures going up and down and make a withdrawal.

Santander asked if he contacted X or X contacted him. Mr B said his cousin looked into the investment and they called him, then they called Mr B and he had been talking to X via telegram. Mr B again said he was sceptical as it was a lot of money.

Santander suggested Mr B should check the FCA website and invest a smaller amount in the investment before making the payment.

Having listened to this call I think the information given by Mr B was common of scams Santander would have been aware of at the time including that he was using a company

different to the ones he was making payments in to invest with and that he was communicating with X via telegram.

I think Santander should have asked more probing questions in this call, and if it had I think it would have found even more hallmarks of a scam including that Mr B was being asked to move payments via cryptocurrency exchanges and was being helped via AnyDesk.

If Santander had asked relevant probing questions, as I think it should have, I think it would have uncovered the scam and prevented any further loss. It is therefore responsible for Mr B's loss from the payment he made of £9,000 on 27 January 2022 onwards.

Did Mr B contribute to his loss?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances, I do think it would be fair to reduce compensation on the basis that Mr B should share blame for what happened. Mr B clearly had concerns about the payments he was making and thought the returns promised by X were seemingly too good to be true. A simple search online from the time also shows negative information about X. So, I think if Mr B carried out some basic checks, he'd have likely discovered the adverse information about X prior to paying it.

I think it would be fair to reduce compensation by 50% on the basis that Mr B should share some blame for what happened.

Putting things right

Santander UK Plc should refund 50% of all the payments Mr B made into the scam after the first payment he made of £1,000. Santander UK Plc can deduct any refunds Mr B received from the scam before making this 50% deduction.

From this figure Santander UK Plc can deduct the amount it has already refunded Mr B.

I also require Santander UK Plc to add 8% simple interest to the amount it pays Mr B from the time Mr B made the payments to the time the Santander UK Plc makes the payment to him less any lawfully deductible tax.

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 B to accept or reject my decision before 14 February 2024.

Terry Woodham
Ombudsman