

## The complaint

Mr B complains about Santander Bank PLC.

He says that Santander didn't do enough to protect him when he became the victim of a scam and would like Santander to refund him the money he has lost.

## What happened

Mr B had been looking to invest and had entered his contact details on a website. He received a call from someone who said they worked for Option FX who said they could help him earn money through cryptocurrency.

He was provided with access to a website where he could see his 'trading platform' and downloaded 'Anydesk' on instruction and began making payments.

Mr B made the following payments.

Date	Payee	Payment type	Amount
6 February 2019	LYFinance	Debit card	£1,037.06
22 February 2019	LYFinance	Debit card	£1,000
4 March 2019	Benveto	Debit card	£3,115.44
7 March 2019	Coinbase	Bill payment	£45
7 March 2019	Coinipop	Debit card	£2,061.14
22 March 2019	Coinipop	Debit card	£8,905.35
23 March 2019	Coinipop	Debit card	£1,434.16
		<b>Total</b>	<b>£17,553.15</b>

Unfortunately, Mr B was not making legitimate payments, and had been scammed.

He complained to Santander, but it didn't uphold his complaint. As things weren't settled, he brought his complaint to this Service.  
Our Investigator looked into things but didn't think that the complaint should be upheld.

Mr B asked for an Ombudsman to make a final decision, so the complaint has been passed to me.

## **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.

Having done so, I've decided not to uphold Mr B's complaint for broadly the same reasons as our Investigator. I know this will be disappointing for Mr B, so I'll explain why.

It isn't in dispute here that Mr B has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

In broad terms, the starting position at law is that banks, electronic money institutions (EMI's) and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

Mr B authorised the payments in question here – so even though he was tricked into doing so and didn't intend for his money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Santander should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr B when he authorised payments from his account or whether it could and should have done more before processing the payments.

Having considered the payments Mr B has made, I'm afraid I don't think that any of the payments Mr B made were significantly unusual or uncharacteristic enough for Santander to have first got in touch with him before processing the payments on his request.

While there may be an argument that the payment made on 22 March was unusual, I do also need to take into account the way in which Mr B used his account – and if this payment should have stuck out to Santander in Mr B's particular circumstances. Looking at the payment history of Mr B's account, I can see that in the lead up to the scam, Mr B also made a number of high value payments – two payments of £20,000 and a payment of almost £7,000, so I don't consider the scam payments were particularly concerning in this circumstance. The scam payments were also spread out over a few weeks, and Mr B's account maintained a healthy balance throughout.

I know that Mr B considers that the payments *are* unusual but taking everything into account, I don't think that they were in this instance – and it is not reasonable for Santander to be involved in every transaction a customer makes, and I don't consider the amount of these payments to be high enough for Santander to have concerns that Mr B was at risk of financial harm.

I do understand the payments were being made to a crypto exchange, however not every payment made to crypto is as a result of a scam.

I've also thought about recovery of the payments – but even if Santander had attempted a chargeback for the payments Mr B made by card, I don't think that this had any real prospect of being successful. I know Mr B says that the service wasn't provided – but Mr B made the payments to legitimate crypto exchanges, and the crypto was provided – the subsequent transfer to the scammer is therefore a separate matter.

I am very sorry for the situation Mr B now finds himself in – I know that he acted in good faith and has lost a lot of money as a result of a cruel scam – but this is the fault of the scammer themselves, and I can't ask Santander to refund Mr B when I don't think that it has done anything wrong.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 May 2024.

Claire Pugh  
**Ombudsman**