

The complaint

Mr P complains that Santander UK Plc (Santander) won't refund money he lost in an investment scam.

What happened

What Mr P says:

Mr P says he invested money in an investment that turned out to be a scam. The company involved (which I will call 'company A') claimed to be placing advertising banners on the internet. Company A said investors would get a return every time a banner was placed.

Although Mr P hasn't specified the payments in question, we can see from Santander's records that he made the following payments which appear to be part of the scam
(continued):

Date	Payment	Amount
14 March 2018	International payment	£9,803.53
20 August 2018	Debit card payment	£500

20 August 2018	Debit card payment	£1,500
22 August 2018	Debit card payment	£5,000
23 August 2018	Debit card payment	£5,000
27 August 2018	Debit card payment	£4,014.21
27 August 2018	Debit card payment	£4,015.01
29 August 2018	Debit card payment	£4,004.81
29 August 2018	Debit card payment	£1,601.92
17 October 2018	Debit card payment	£7,774.22
Total paid		£43,213.70
18 December 2018	Credit	(£500)
18 December 2018	Credit	(£1,500)
Total net loss		£41,213.70

Mr P says he didn't get any returns and company A turned out to be a scam operation. He says many other investors also lost money.

Mr P says Santander should've protected him. He is an elderly man with little experience in investments.

He says he made some other payments using a credit card from another bank, and these have been refunded. He says Santander should've flagged the payments and made sure he wasn't being scammed. But the bank didn't contact him at all. He says the bank should've warned him this was a scam – the bank should've checked whether company A was fraudulent.

What Santander said:

In July 2023, Santander said Mr P's scam claim hadn't been raised before then, but declined his complaint. The bank said Mr P authorised the payments and therefore the bank wasn't liable. Santander said they'd try to recover the funds from the bank they were sent to.

Our investigation so far:

Mr P brought his complaint to us. Our investigator didn't uphold it. He said Santander should've contacted Mr P when he made the payments. But due to the time that had passed, he didn't have any evidence whether the bank did so.

But if the bank had intervened, it was likely Mr P would've told Santander he was investing in a company which provided online banners and marketing for well known brands. And the scam didn't come to light until much later – after Mr P made the payments. So, it wasn't likely that Santander would have stopped them.

Mr P didn't agree and asked that an ombudsman look at his complaint, and so it has come 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.

I'm sorry to hear that Mr P has lost money in a scam. It's not in question that he authorised and consented to the payments in this case. So although Mr P didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have 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.

I need to decide whether Santander acted fairly and reasonably in its dealings with Mr P when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it came into effect in May 2019 – after the payments in question.

I noticed that Mr P did get some money from company A – as shown in the schedule. It's not clear if this was a refund of previous payments made, or whether it was an investment return. But – it has no effect on the outcome of Mr P's complaint. **(continued)**

I looked at Mr P's account – and none of the payments were particularly out of character compared to the way he normally used his account. Mr P had made payments of similar value in the months before the scam. For example, I can see he made the following payments:

November 2017: £2,639, £3,116, £2,637, £1,055, £1,055.

March 2018: £2,500.

July 2018: £16,975, £9,000, £11,000.

September 2018: £7,000, £2,000.

The pattern of transactions also doesn't fit the usual pattern of scam payments - as the payments didn't totally drain the account of funds.

I then considered what might have happened had Santander intervened and contacted Mr P. And here, I don't think it would've made any difference. That's because I can see that the issues with company A didn't become known until after Mr P made the payments – in 2019 – that's when reports appeared online. And I don't think it's reasonable in any case to expect Santander to carry out specific checks on a recipient each time a payment is made.

And – Santander weren't acting as Mr P's investment advisors, so had no duty to advise him about the wisdom of the investment in any case.

Mr P has told us that his credit card provider has refunded money he paid on the card. I can see he brought that complaint to us and the bank then agreed to make a refund. But – each complaint is looked at in its own circumstances, and therefore what that bank did has no bearing on Mr P's complaint against Santander.

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Santander took the necessary steps in contacting the bank that received the funds – in an effort to recover the money. I can see that Santander contacted the recipient bank, but no funds remained to be repaid. Given that the scam payments took place in 2018, and Mr P complained to Santander in March 2023, this wasn't a surprise – as normally in such scams, funds are removed from the recipient bank immediately.

Mr P has lost a lot of money. He's explained why the money was important to him and his circumstances. He will therefore be disappointed by my decision, but I'm not going to ask Santander to do anything here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 16 December 2024.

Martin Lord
Ombudsman