

## **The complaint**

Mr K is unhappy that Santander UK Plc won't refund money he lost as part of an investment scam.

## **What happened**

- Mr K completed an enquiry form on what he thought was a legitimate website about purchasing shares in Uber. He was subsequently contacted by a representative of a business I'll refer to as 'E', which was supposedly the trading name for a company registered on Companies House and an appointed representative for a firm regulated by the Financial Conduct Authority (FCA).
- Mr K proceeded to make three bank transfers totalling £30,081.48 between 9 and 13 May 2019, believing he was purchasing shares. He made the first transfer over the phone and the subsequent transfers online.
- When Mr K realised he'd been scammed, he raised the payments with Santander. It declined to refund him, so he brought his concerns to our service to investigate.
- On 11 May 2023, I issued a provisional decision upholding the complaint. I considered that Santander failed to provide Mr K with an adequate warning when it intervened with the first payment. Had it have done, I thought it likely Mr K wouldn't have suffered the losses he did. So I considered that Santander ought to refund him.
- Mr K accepted my provisional decision. Santander submitted further comments. In summary:
  - It believed I based my decision on Santander not signposting Mr K to something that hadn't yet happened. It said that before the first payment, Mr K told it he had checked the FCA register, which showed it was registered. And that its advisor couldn't have known he was using a cloned company, as the FCA's warning wasn't placed on the website until five months later.
  - With the later payments, there wasn't a further interaction as he'd already transacted with E. Regardless, the FCA's website still showed the company was registered at the time.

## **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 thought about Santander's response carefully, I've not changed my mind about what's a fair outcome to this complaint. I'll reply to what I think are the key points:

- I accept the FCA's specific warning about E operating as a clone of a registered firm isn't relevant here. It appeared after the disputed transactions. However, even in the absence of this specific warning, I've not been persuaded that Santander intervened appropriately.
- The prevalence of fraudsters operating under the guise of registered firms was a known risk at the time Mr K made these payments. The FCA had published a general warning about this in 2016, alongside steps to avoid cloned firms, such as contacting them using the details on the Financial Services Register and cross-referencing the details on the firm's website and Companies House.
- In line with Santander's obligations to protect Mr K from financial harm, I'd have expected its warning to cover the risks of cloned firms and how to avoid them. But from the evidence I've seen of the script it would've read out, it didn't. Instead, it only *recommended* checking the details on the FCA's website, a step that's unlikely to have alerted Mr K to a risk here.
- It follows that I disagree with Santander that my decision was based on something that hadn't happened and information it couldn't have known. Instead, it's based on Santander not adequately warning Mr K about a common fraud risk in line with the FCA's general advice published a long time before these payments were made.

It follows that I've not changed my mind that Santander needs to put things right here. For completeness, I've included my provisional findings again below:

- Although it's accepted Mr K was the victim of a scam, it's not disputed he made these payments. So the starting position, in line with the Payment Services Regulations 2017, is that he's liable for them.
- But I've also considered whether Santander could've reasonably prevented his losses, given its obligations to look out for unusual or otherwise suspicious payments that might suggest he's at risk of fraud.
- Santander's evidence suggests that, given the nature of the first payment, Mr K would've received a warning when he made it over the telephone. So the key consideration isn't whether Santander ought to have identified the payments as unusual – it did that with the first one. Instead, it's whether its intervention was adequate in the circumstances.
- It doesn't have the call recording given the time that's passed, but it's shown me a script of the warning given. Overall, I'm not persuaded this was enough in the circumstances. It's brief, it's not interactive, and it doesn't highlight the losses Mr K could face. I accept it does recommend checking the company on the FCA's website, but it doesn't ask Mr K if he'd done that, nor does it highlight why this is important and what to look out for. It also doesn't warn of the risk of cloned firms and the steps he could take to avoid them, in line with the FCA's online advice first published in 2016.
- These are the sorts of steps I'd have expected given Santander's position of expertise and obligations. And had Santander intervened adequately, I think it's likely Mr K would've taken heed of the warning and information. It's clear he was reassured

by the supposed legitimacy of the company. So, had he used the details on the register to check their connection to the regulated firm (in line with the FCA's advice in these circumstances) and, had he seen they weren't a properly listed appointed representative as they should've been, I think it's likely this scam would've unravelled.

- Taking this all into account, I'm persuaded that Santander's failure to provide Mr K with an adequate warning led to his losses. So I think it should put things right, by refunding the fraudulent transactions alongside 8% simple interest per year to compensate him for the time he's been out of pocket.
- I've considered whether Mr K ought to bear some responsibility for what happened. But he wasn't knowledgeable on investment scams, as I'd have expected Santander to be. And from an ordinary person's perspective, who'd seemingly no prior investment experience, I can see how he was taken in by their explanations that E was connected to a regulated firm, as well the official looking brochures, paperwork, and online platform. Taking this all into account, I don't Mr K should share the blame here. So I've not made a deduction for contributory negligence.

### **My final decision**

For the reasons I've explained, I uphold Mr K's complaint. Santander UK Plc must:

- Pay Mr K the total of the disputed payments, less any amount recovered or already refunded. I understand this to be £30,081.48.
- Pay 8% simple interest per year on this amount, accruing from the dates of payment to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 25 July 2023.

Emma Szkolar  
**Ombudsman**