

The complaint

Mr E complains that Santander UK Plc has declined to refund the losses he incurred when he fell victim to an investment scam in 2019.

Mr E has brought other complaints alongside this, but for avoidance of doubt, this decision concerns only his complaint about the scam payment he made from his Santander account in 2019. His other complaints (concerning wholly separate incidents) are being addressed in separate decisions.

What happened

The parties here are aware of the circumstances of the complaint, so I won't recount these in detail here. In brief, in September 2019 Mr E was tricked into sending an international transfer of £5,000 from his account with Santander. He did so in the belief he was sending the money to an investment scheme, but it later transpired he was dealing with scammers.

Mr E had seen an advert on a well-known social media platform. He says he didn't think the platform would show adverts that weren't legitimate. Interested in the advert, he clicked through and was taken to a website for a supposed investment firm. I'll refer to this firm as T.

Mr E says he carried out some research into T but didn't find any negative reviews. While the FCA has subsequently issued a warning about T, there was no such warning in 2019.

Having filled in an online enquiry form, he says he received an email with projected returns (which he no longer has). In a later phone call, he was told the investment was for land in California. Mr E recalls thinking the agent sounded professional. Mr E says he had doubts, having been a scam victim previously. But the agent let him listen to what was supposedly a satisfied former investor. Persuaded, Mr E decided to go ahead. He sent the payment by international transfer to a bank account in Malaysia.

Mr E says he was given access to a website showing his investment. Within two weeks this showed a profit of £3,000 – a return of 60%.

But later the website stopped working. And despite having been promised an investment share certificate, this didn't arrive. Mr E didn't report the matter to Santander at the time, explaining he was embarrassed about the scam. But in 2022 he reported it to Santander.

Santander was unable to recover the money he'd sent. And it said it wasn't responsible for reimbursing Mr E, because it had followed his instructions when it sent the payment.

Mr E didn't agree. He asked this service to impartially review what had happened.

On 11 August 2023, I issued my provisional findings on the merits of Mr E's complaint about the scam in 2019. In my provisional findings, I explained why I intended to uphold Mr E's complaint in part, and I offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

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 to be good industry practice at the time.

Under the relevant regulations, and in accordance with general banking terms and conditions, banks have an obligation to execute an authorised payment instruction without undue delay.

As a consequence, the starting position is that liability for an authorised payment rests with the payer, even if they made that payment as the consequence of a fraud or scam - for example as part of an investment scam such as this was.

However, where the customer made the payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though the customer authorised the transactions. I consider that, as a matter of good industry practice, a bank should take reasonable and proportionate steps to protect its customers against the risk of fraud and scams.

Relevant here, I consider that Santander should have been looking out for payments or payment patterns that were significantly out of character or unusual and that might therefore be indicative of the potential for financial detriment to its customer through fraud or scam.

I have firstly considered whether I think the relevant payment in this case, being a £5,000 international transfer to Malaysia was significantly out of character or unusual in the context of Mr E's prior account usage (or otherwise indicative of the potential for financial harm).

I consider it relevant that this payment was being sent to a new payee – a recipient he'd not paid before from this account. Furthermore, this was going to an international destination – and based on the statement evidence submitted by Santander, I can't see that Mr E had made any other international transfers from his account.

I note that Mr E's transfers on his account over at least the prior 12 months were typically much lower in value (with one exception). As our Investigator has highlighted, Mr E had made a similar sized payment just a few weeks prior to the scam payment. But the payee's name on that earlier transaction indicates this was being sent to an account held in Mr E's own name. And this appears to have been a longstanding existing mandate with multiple prior payments over a considerable period of time. Being a transfer to a longstanding existing payee in the UK and apparently in Mr E's own name, I find this was significantly different to the scam payment, the latter being Mr E's first international payment, and to a new payee held in a third-party company's name. Santander would also have been aware he'd previously fallen victim to an APP scam.

All considered I think there was enough going on when Mr E asked Santander to make this £5,000 international payment, that the bank ought to have considered this payment was one where there was a higher than usual risk it could lead to financial detriment to Mr E.

As such, in light of good industry practice at the time, I think it is reasonable to have expected Santander to intervene at that point - and to have asked Mr E about the payment before processing it. In the circumstances I'd consider it reasonable and proportionate for Santander to ask a few relevant questions such as: what the investment was in; what checks he'd carried out and how he'd found out about it.

Had it done so, I have seen nothing to suggest that Mr E would have done other than respond openly and honestly to Santander's enquiries.

So, Santander would likely have identified that Mr E was investing in a scheme he'd seen advertised on social media, apparently offering exceptionally high rates of return. It would have likely found out that the investment scheme was seemingly based in Malaysia yet supposedly selling shares in plots of land in California. I think it would have come to light that there was very little information (if any) about this scheme available anywhere besides T's own website and that T wasn't in fact registered with the FCA to promote investments to UK consumers. I think this and the other facts would have led Santander to conclude the investment was almost certainly not legitimate and that Mr E was about to be defrauded. Being made aware of this, I consider it most likely Mr E would not have gone ahead.

Because Santander did not take these steps and prevent Mr E's loss, I find it must bear at least some of the responsibility here.

I've gone on to consider whether Mr E's actions, or inactions, mean he should share liability for the loss he incurred.

Taking everything into account, I think there were clear signs that this wasn't a legitimate investment. While Mr E no longer has the details of the promised investment returns, I consider these were likely high enough to have made this investment seem particularly attractive relative to legitimate investments. Mr E has reported seeing profits on his account of about 60% within two weeks. That is a remarkably high rate of return. Based on what I have been able to establish I think the rate of return being offered by T was simply too good to be true. Mr E was right to have significant doubts.

There was no real explanation given to Mr E about how such a remarkably high rate of return could be possible. Nor is it clear why T was based in Malaysia yet supposedly selling land in California. Overall, these factors should have been a clear red flag that something wasn't right with what Mr E was being told by T. At the very least it should have prompted Mr E to independently investigate how exactly the scheme was proposing to pay such a high level of return. While Mr E explains he hadn't found negative reviews, and neither had his mother, I am not satisfied this was enough to establish it was a legitimate investment scheme and didn't help to explain how the scheme could legitimately generate returns of that size.

Considering the above, I think it is fair and reasonable that Mr E should share the loss equally with Santander. Unfortunately, I think the attraction of what seem to have been significant returns led Mr E to invest when otherwise he'd have gone with his instinct and followed his doubts instead.

So, having carefully considered everything, I find Santander should refund Mr E with 50% of the £5,000 he lost. I think it is fair and reasonable for both sides to share equal responsibility for the losses here.

Putting things right

Given the above, I am currently minded to find it fair and reasonable that Santander should:

- *pay £2,500, being half the money Mr E lost as a result of the scam; and,*
- *pay Mr E interest on that amount at 8% simple from the date of the payment until the date of settlement - less any tax lawfully deductible.*

I understand that Mr E has since entered into an IVA agreement. His IVA practitioners (Quality Insolvency Services Limited) have confirmed their interest in any redress due to him as a result of this complaint. As such Mr E should contact the IVA practitioner to discuss what needs to happen with the money he receives.

In my provisional decision, I asked both sides to provide any further arguments or information by 25 August 2023, after which point, I said I would issue my final decision on the matter.

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.

Santander replied and said it agreed to reimburse Mr E in accordance with my provisional findings.

Mr E also responded. He explained that recently the Police have been in contact with him about the 2019 scam. The Police were investigating that scam and it appeared there were other victims. Mr E wanted this taken into account. Mr E thought the bank should have a clear obligation to refund all his money.

I have considered Mr E's further representations and the evidence he has provided showing the investigation by the Police into the scam he unfortunately fell victim to in 2019.

Firstly, I am pleased to hear that the scam Mr E fell victim to is now being investigated by the Police. That suggests there may be a chance (even if it seems very remote) that the Police can take action against the perpetrators of the scam. It also suggests action might be possible to help others avoid falling victim to similar scams in future.

However, it doesn't directly influence the outcome of my decision about Mr E's complaint about Santander in relation to that scam. When I am looking at that complaint, I am considering what Santander did or did not do at the time. I do not doubt that Mr E was the innocent victim of a scam. But as I mentioned in my provisional decision (quoted above) that doesn't mean Santander needs to refund him in full.

In short, whether the perpetrators are now the subject of Police investigation does not change what Santander (as Mr E's bank) should have done at the time or what I now require it to do to put matters right. While I understand Mr E's request that he should receive a full refund of this amount rather than just half, I still find it fair and reasonable in all the circumstances that Mr E should share the loss equally with Santander for the reasons I explained in my provisional decision quoted above. Those reasons were not connected to the guilt of the perpetrators, or whether it might be possible for the Police to prosecute them.

Having reviewed everything afresh and taken careful account of the response of both parties to my provisional findings, I think it is fair and reasonable for both sides to share equal responsibility for the losses here. I find Santander should refund Mr E with 50% of the £5,000 he lost. Although I appreciate this will be a disappointment to Mr E, I can't fairly ask Santander to do more than that.

Putting things right

Given the above, I consider it fair and reasonable in all the circumstances that Santander should now:

- pay Mr E £2,500, being half the money he lost as a result of the scam; and,
- pay Mr E interest on that amount at 8% simple from the date of the payment until the date of settlement - less any tax lawfully deductible.

I understand that Mr E has since entered into an IVA agreement. His IVA practitioners (Quality Insolvency Services Limited) have confirmed their interest in any redress due to him as a result of this complaint. As such Mr E should contact the IVA practitioner to discuss what needs to happen with the money he receives.

My final decision

For the reasons set out in my provisional decision and above, I uphold Mr E's complaint against Santander UK Plc about the scam he fell victim to in 2019.

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

Stephen Dickie
Ombudsman