

## The complaint

G, a limited company, complains that Santander UK Plc didn't do enough to prevent the loss it suffered when it sent money to a Santander account as the result of a scam.

Mr P (a director of G) brings the complaint on its behalf and has used a claims management company (CMC) when doing so. But for ease of reading, I'll mostly just refer to G when I mean Mr P or the CMC.

## What happened

As the circumstances leading up to this complaint are well known to both parties, I will not repeat them all again here in detail. Instead, I will keep my summary of what happened brief and focus on the reasons for my decision.

In 2019 G came across an investment opportunity, with a company I'll refer to as 'D'. Payments totalling £160,000 were made between January 2019 and July 2019. Relevant to this complaint are the payments G made between January 2019 and March 2019 from its bank account with 'H' to D's account, which was held with Santander.

Date	Amount
19 January 2019	£3,000
25 January 2019	£20,000
26 January 2019	£7,000
6 February 2019	£3,000
25 February 2019	£20,000
26 February 2019	£20,000
28 February 2019	£20,000
8 March 2019	£7,000

G complained to Santander. It said that it had likely failed: to meet its obligations when allowing its customer's account to be opened; in its monitoring of the recipient account; and in its response when notified of the fraud. G asked that Santander refund its loss. Santander didn't uphold its complaint. The matter was referred to our service. Our Investigator didn't think we could consider all of G's complaint. She explained the relationship under which we could consider G's complaint, that being DISP 2.7.6R(2B) only applies in relation to a complaint concerning an act or omission which occurs on or after 31 January 2019. She said the opening of the Santander account and some of G's payments were outside the scope of our jurisdiction. For what she could consider, she didn't recommend the complaint should be upheld. G disagreed and asked for an Ombudsman to consider its complaint.

The case was passed to me. On reviewing the file, I agreed with our Investigator's outcome, but I thought it would be helpful for me to share with G more detailed reasoning for why I couldn't uphold its complaint. I wrote to both G and Santander explaining my thoughts. In summary I said:

- G's payments themselves or the movement/spending of those funds wouldn't have stood out to Santander as suspicious or unusual in the context of the recipient account holders previous activity.
- Had Santander intervened at any point to carry out due diligence checks or asked its account holder for evidence of source of funds, on balance, its account holder would've been able to provide this. Its most likely that the information they would've shared with Santander is what they shared with their investors, which G itself has said was professional. I'm also not aware of, nor have I seen evidence of any adverse information about D (who'd been incorporated and trading since 2016) prior to G's funds being spent. With that all in mind, I can't see a basis upon which Santander could've refused its account holder access to the funds in their account. I appreciate G may wish to argue at this point Santander should've done more, but it isn't a bank's role to forensically investigate, regulate or audit a limited company to whom it provides a banking service. It is to have measures and checks in place to monitor the account for potential misappropriation of funds.
- Crucially for me to fairly uphold this complaint, I'd need to be persuaded that there was a failure that took place between 31 January 2019 and the point at which G's funds were spent AND but for that failure, G's loss would have been prevented. It isn't enough just for there to have been a failure, I'd need to be able to conclude that the failure fairly and reasonably caused the loss. And here, I can't agree this would've been the case. Because even if I'm wrong about the above point and Santander failed in its monitoring of the account or I conclude that it ought to have closed the recipient account at a point before G's funds were spent (which to be clear is not what I'm saying it should have done), in the specific circumstances of this case, I can't fairly conclude that this would've resulted in a prevention of G's outstanding losses. I say this because given the sophistication and complexity of what went on, I don't think (1) at that point Santander could have reasonably concluded whether G's payments were fraudulently obtained or decided whether D were operating a scam; and (2) at best if the account operation was outside of Santander's risk appetite, under its commercial discretion all it would have done is ended its banking relationship. But as there is evidence of a payment being made to another account. I can't say that even Santander closing its customer's account would've necessarily led to the prevention of G's losses, as I don't think that G would have ended up in a meaningfully different place.

I asked both parties to send me any further comments and/or information they want me to consider. Santander didn't respond. G made some further comments. As part of these referenced its concerns about Santander's know your customer (KYC) checks and its onboarding process. I issued a separate decision setting out which aspects of G's complaint we can, and can't, look into. So I'll now go onto address the points it made, which I can comment on, in my findings below.

### **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.

G highlights the magnitude of the alleged scam and suggests the account should be considered in the context of a group scam. It says given the sheer volume of victims involved, with each contributing substantial amounts to the account, other victims should also be considered. I'm not sure if what G is suggesting is that our service should consider the matter in the same way that a court would a class action. But if it is, this is not something I can do. Our service is set up to determine each case (within the scope of our jurisdiction) individually based on its own merits. And here, as I'm required to do, I've looked at the individual circumstances of G's complaint.

This doesn't mean that I haven't taken into consideration the activity on the account or thought about G's payments within the broader context of the other transactions. In fact, I have, and this is the basis for me saying that G's payments themselves or the movement/spending of those funds wouldn't have stood out to Santander as suspicious or unusual in the context of the recipient accountholders general use of the account.

G claims that the account was being operated by a known fraudster, and that Santander allowed them to receive hundreds of thousands of pounds from pensioners, for a business venture that didn't have any regulatory status. It's submissions heavily focus on the investment scheme lacking regulatory approval/permissions and this being something Santander ought to have questioned. I appreciate the position taken by G, that Santander should have exercised greater vigilance in its monitoring of the recipient account, and that its negligence in doing so has resulted in its loss. But as I've explained before, it isn't enough for there to have been a failure, I'd need to be able to also conclude that the failure fairly and reasonably caused the loss – which I still can't in these circumstances.

Firstly, I think it's important to start by saying that it's not illegal to offer unregulated investment opportunities. This also wouldn't be a basis for saying that Santander shouldn't provide an account to businesses who do. The amount and type of risk Santander is prepared to take is a commercial decision for it to make. And the nature of its customers business would determine the level of due diligence it carries out. It goes without saying that if Santander did, or reasonably should have had concerns about the operation of the account then I'd have expected it to have investigated this. But as I've set out before it isn't a banks role to forensically investigate, regulate or audit a limited company to whom it provides a banking service. I've also not seen any evidence to support that the persons operating the account at the time were 'known fraudsters' as G has alleged. Nor would Santander have known the level of detail (i.e., pensioners) about the sender of the funds through the monitoring of the account's transactional activity. For the reasons I've already explained, I remain of the opinion that even if Santander were to have intervened between 31 January 2019 and the point at which G's funds were spend, in this case, it wouldn't have resulted in the prevention of any of its losses.

Finally, I'm satisfied that Santander's response to G, when it was notified of the alleged scam correctly advised no funds remained that could be returned.

I am sorry to hear about G's loss. But nothing it has said has persuaded me to deviate from the outcome I've reached, as set out above.

### **My final decision**

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 18 March 2024.

Sonal Matharu  
**Ombudsman**