

## The complaint

Mr C complains that Santander UK Plc didn't do enough to prevent him losing money to an alleged scam.

## What happened

The background to the complaint is known to both parties and so I won't repeat it at length here.

Mr C says he was introduced to an investment opportunity with 'F' through a financial intermediary firm / introducer I'll refer to as 'T'. In March 2019 Mr C made a payment of £10,000 from his Santander account. Mr C says he received an interest payment in April 2019, but nothing further, and F eventually entered insolvency proceedings. Mr C now believes F were operating a fraudulent "*ponzi scheme*".

Mr C complained that Santander failed to intervene and provide him with warnings that the payment he was making might be fraud. He asked that it refund his loss. Ultimately Santander concluded that it was not liable for Mr C's financial loss. The matter was referred to our service. Our Investigator looked into Mr C's complaint but didn't recommend that Santander refund him. The Investigator explained that if Santander had intervened when Mr C made the payment, it's unlikely that his loss could've been prevented, as all of the information at the time suggested the investment was genuine. Mr C disagreed, and in response to our Investigators assessment raised the points listed below and asked for an Ombudsman to review his case.

- Mr C said, between November 2016 and June 2017 F's bank account was held with Santander. He thinks Santander potentially failed in their customer due diligence (CDD), know your customer (KYC) and anti-money laundering (AML) obligations when onboarding F. He says had Santander applied more care upon the opening of the account and the monitoring of it, it would have identified several areas of concern. He believes any one of which could have alerted Santander to the fraud.
- Mr C also shared a legal opinion on whether the financial institutions involved could be held liable for offering financial services to an unviable business, that being F. The document provides commentary on Santander previously being at the centre of controversy owing to its transaction monitoring and on boarding processes respectively. Specifically, that around the time F were incorporated and onboarded Santander were going through a period of poor compliance relating to on-boarding customers without effective risk profiling, management and oversight. The report states this as being something Santander were later sued for.
- This document/report also comments on the ease and length of time Santander gave F access to financial services. The suggestion being that this developed a positive customer profile, which likely would've been used/leveraged to present authenticity when opening the bank account (with another bank) to which Mr C made his payment from his account held with Santander.

- Mr C says F changed its banking arrangements after June 2017. If it transpires that Santander suspected fraud or closed the bank account for any reasons related to the operation of the account, then Mr C asserts that it is reasonable that Santander should have warned its customers about F (and its group of companies) at the time of making the payment / investment.
- Mr C also made detailed submissions, which focus on reasons for why he believes F were operating as a fraudulent “*ponzi scheme*”.

As some of the concerns raised by Mr C weren’t matters that I could Investigate, or comment on, I issued a jurisdiction decision setting out the extent of what I’m able to consider. In summary I said Mr C is an eligible complainant, and I can consider his complaint against Santander, but my considerations will be limited to those which arise from matters relevant to his ‘customer’ relationship with Santander under DISP 2.7.6R(1). I explained that the concerns he’d raised about the account F once held with Santander did not arise from his customer relationship or any other relationship listed in DISP, so I couldn’t investigate or comment on these.

Now that the jurisdiction matter has been decided, my decision about the aspects of Mr C’s complaint I do have the power to investigate is explained below. Mr C also made further submissions in support of his complaint whilst the jurisdiction matter was being concluded. I’ve also addressed these points 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.

Having done so, I’ve reached the same outcome as the Investigator and for largely the same reasons. I appreciate this will be disappointing for Mr C, and I’m genuinely sorry to hear about his loss, but I can’t fairly and reasonably ask Santander to refund this. I’ll explain why.

Ultimately the crux of Mr C’s complaint is that Santander failed to prevent his losses in relation to the payment he’d sent to F in March 2019. Mr C accepts that he instructed the payment in dispute. And in general terms there is no obligation for Santander to intervene in authorised payments unless there is a fraud or scam to protect against. Mr C has made quite detailed submissions about why he believes F were operating fraudulently at the time of the payment in question. However, I won’t be making a finding on this point. I’d like to assure Mr C that’s not intended as a discourtesy; it’s simply because I don’t think I need to, to decide this complaint.

The reason being, that firstly, in these circumstances, Mr C isn’t entitled to an automatic refund from Santander if F were found to be operating fraudulently. And secondly, even if I were to accept, on the balance of probabilities that F were operating fraudulently (which to be clear I’m not saying is the case) I don’t think, in these specific circumstances any intervention that could reasonably have been expected at the time would have made a difference to the loss Mr C has suffered.

I think it’s important for me to explain that I can only ask Santander to refund Mr C’s remaining loss if I was persuaded that it failed to do something that I’d reasonably have expected it to have done, and but for that failure all or part of Mr C’s losses would’ve been prevented, or if I thought it was otherwise fair and reasonable to do so.

The disputed payment was made by Mr C through his online banking. Mr C says that he does not recall being questioned about the reason for making the payment, nor does he recall being given, or seeing, any specific warning that it might be fraud. Our Investigator said as the amount sent was large, and it was going to a new payee, Santander should've ideally spoken to Mr C before processing the payment. Santander disagrees. My thoughts about making a finding on this point are not too different to the question around whether F were operating fraudulently, and similarly I don't think I need to make an explicit finding on whether the payment ought to have triggered Santander's fraud detection systems to reach what I think is a fair and reasonable outcome, because even if it had, and Santander had intervened and spoken to Mr C, I agree with the Investigator, I don't think this would've prevented his losses.

Mr C says that he thinks Santander failed in its duty to protect him by allowing his payment to be sent to a company that he believes was unlawfully raising funds from the public. He says this is not a hindsight argument—this was a matter of public record at Companies House at the time of making the payment. Mr C is of the opinion that Santander ought to have been aware that F were not legally registered as a Plc and were misleading investors and it should never have processed his payment. He also thinks as F once held an account with Santander, if the reason for why the account was closed was because of suspected fraud or for any reason(s) related to the operation of the account, then Santander should have warned him about this at the time of processing the payment. He disagrees with the Investigator's finding that even if Santander had provided warnings, he would have gone ahead with the investment anyway. He considers this to be an unfair and incorrect assumption. Mr C argues he was never warned about the risks, never told to check whether F was legally authorised to raise money from the public, and had Santander told him that F were unlawfully operating as a Plc, he would not have gone ahead with making the payment. He doesn't agree that our service can assume that he would have ignored a warning when Santander failed to provide one at all.

I've carefully considered and taken on board the points Mr C has raised. But where events have not taken place, I'm required to make a finding about the impact of those, on the balance of probabilities and in doing so I need to take into consideration what I'd reasonably have expected Santander to have done at the material time. This must be based on the standards and expectations that were in place for banks such as Santander at the time, not on what Mr C think's it ought to have done nor those which may apply today (but didn't then). I must then carefully weigh all the evidence that is available to me, to reach a conclusion about what I think would've more likely than not taken place.

I appreciate Mr C feels strongly that he wouldn't have gone ahead with the payment had Santander intervened, but I must have regard for the fact that someone who has lost money in the way in which Mr C has, with the benefit of hindsight, would most likely say that they wouldn't have gone ahead with the payment / investment. Not that I'm setting aside what Mr C has said on this point, it's simply that I haven't ascribed as much weight to it, as I have to other evidence. This is also because what Mr C has said is based on his expectations around what Santander's intervention ought to have looked like, and I don't consider these to be reasonable and / or in line with industry standards / best practice at the time.

At the time of processing the payment, if I thought Santander ought to have intervened, a reasonable and proportionate intervention would've been for it to have questioned Mr C about the purpose of the payment and provided him with suitable warnings about the common features of investment scams to help him make an informed decision as to whether to continue with the payment. While I've noted Mr C's point about F incorrectly claiming to be a public company under UK company law, I would not have expected Santander to have carried out that level of research into Mr C's proposed investment firm. It isn't Santander's role to provide investment advice; forensically investigate a payee; or go to the lengths Mr C believes it ought to have done before processing the payment he'd asked them to make from his account. Had Santander intervened, I also don't think it's reasonable to have expected the person Mr C likely would've spoken to, to have known that F once held an account with Santander and the reasons for the closure of that account. And I'm not persuaded that there was anything known to Santander, nor that it reasonably ought to have known (through questioning Mr C and / or through any reasonable level of enquiry) that would've given it a cause to refuse to make Mr C's payment.

I agree with our Investigator that even if Santander had probed, asked questions, and provided a warning about the potential for a scam, I don't think this would have made a difference to Mr C instructing the payment. I say this because it has taken years for the alleged impropriety from F to come to light and we're still not in a position where it can conclusively be said that F were operating fraudulently. Therefore, I don't think this was something that could've easily been unearthed at the time. So even if Santander had provided Mr C with scam warnings, and this had prompted Mr C to do further research, I don't think there was anything he would have found which would have deterred him from making the payment. Particularly as Mr C has told us that he'd read up as much as he could, and he hadn't found anything negative through his searches; he'd invested in two other "green companies" around the same time period; had been introduced to the investment by a genuine firm, T, who he'd had several telephone discussions with; and he'd read the marketing material and watched the videos which all seemed legitimate, including the statement that the bond administrator was regulated by the Financial Conduct Authority (FCA). Mr C tells us that he wasn't aware of the FCA register at the time. But even if Santander had recommended he carry out a search, this still wouldn't have uncovered anything concerning, because from what I've seen F nor T ever purported to be regulated by the FCA, nor was this the case of a genuine regulated investment firm that had been cloned where warnings had been placed on the FCA register. And even if Mr C had searched on the register for the bond administrator it would've shown that they were authorised by the FCA for specific activities and product types. Ultimately the weight of this evidence is greater for me, and based on this I'm persuaded that on balance, its most likely, that Mr C would've gone ahead with making the payment. So, it follows that I can't conclude that Santander's failure to act caused Mr C's loss.

For completeness, I've also considered the Lending Standards Board's Contingent Reimbursement Model Code (the CRM code) – a voluntary code through which victims of authorised push payment (APP) fraud, in certain circumstances, can receive reimbursement of their losses. But I agree with the Investigator that it isn't a relevant consideration in this complaint. The CRM code came into force on 28 May 2019, and it only covers APP payments completed between UK domiciled accounts on or after this date. This is set out at section DS2(2), where it says: *"This Code does not apply to ... (c) any payments completed before the coming into force of this Code"*. As the disputed payment here completed in March 2019, it is not covered under the CRM code.

Finally, I've considered if there was anything Santander did or didn't do that impacted the possible recovery of Mr C's funds. And I agree with the Investigator that given the length of time that's passed between the payment and Mr C reporting this as a scam, any attempts to recover the funds would've likely been unsuccessful.

I appreciate that Mr C has lost out here and despite my natural sympathy for the situation in which he finds himself, for the reasons I've set out above, I'm not persuaded that it would be fair and reasonable to ask Santander to refund his loss or do anything further.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 April 2025.

Sonal Matharu  
**Ombudsman**