

The complaint

Mr D complains that Santander UK Plc won't refund money he lost as part of a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving the reasons for my decision.

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 our investigator for these reasons:

- While Santander thought this was a civil dispute, I accept it's likely Mr D fell victim to a scam, given the reports that the owner of the syndicate largely used the money for his own personal gain.
- But it doesn't simply follow that Santander ought to refund him because of this. These payments were made before the introduction of the Contingent Reimbursement Model, which refunds victims of authorised push payment scams in some circumstances.
- Instead, the starting position, in line with the Payment Services Regulations 2017, is that Mr D is presumed liable for payments he authorised, even if he didn't know they were part of a scam.
- But that's not the end of the matter. There are some situations where we believe that banks – taking into account relevant rules, codes and best practice – ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment.
- Here, I think Santander ought to have been concerned with the second payment Mr D made as part of the scam, as its value represented a significant departure from how the account was usually run. But even if Santander had appropriately questioned him about the payment, I'm not persuaded they'd have recognised it was a scam.
- This syndicate had been in operation for many years. Its social media presence showed plenty of positive testimonials and indeed, Mr D's friends had used and profited through the syndicate. So I don't think Santander would've recognised something was amiss even if they had questioned him. And even if they gave him a very general scam warning, I doubt Mr D would've paid attention to it, given what he'd seen online and his friend's experiences.
- It follows that I'm not persuaded Santander can be fairly blamed for failing to stop

Mr D's losses.

- I've also considered whether Santander could've done more to recover the payments. But, given the time that had passed since the payments were made, this wasn't possible when Santander contacted the banks that received Mr D's money.
- I know this will be disappointing to Mr D, particularly as he's been a victim of such a cruel and sophisticated scam. But I don't find that I can fairly blame Santander for his losses.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 April 2024.

Emma Szkolar
Ombudsman