

The complaint

Ms B complains that Santander UK Plc won't refund money she lost when she says she was a victim of a scam.

Ms B is represented by a firm that I'll refer to as 'R'.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

Ms B has explained that she was introduced to an investment opportunity, by her sister's friend, with a firm I'll refer to as 'F'. And that she had access to F's online portal – where she could see trades and deposits in real time. Ms B made the following card payments to F from her Santander account:

Date	Amount
17 February 2021	£9,000
24 February 2021	£5,000
25 February 2021	£5,000
6 March 2021	£5,000
6 March 2021	£10,000
7 March 2021	£10,000
22 April 2021	£10,000
22 April 2021	£5,000
23 April 2021	£10,000
6 May 2021	£10,000
6 May 2021	£7,000
6 May 2021	£10,000
12 May 2021	£8,000
12 May 2021	£5,000

Total	£109,000
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Ms B received the following returns from F:

Date	Amount
8 April 2021	£5,000
30 April 2021	£10,000
27 May 2021	£6,000
27 May 2021	£5,000
28 May 2021	£575
28 May 2021	£2,000
12 December 2021	£4,282.30
Total	£32,857.30

The final return was received by Ms B as part of a settlement with F in which she agreed, amongst other things, to waive *“any and all existing claims, refunds, chargebacks, actions against F...”*.

This puts Ms B’s total loss to £76,142.70.

Ms B says she realised she’d been scammed when she heard other stories like hers.

R complained to Santander, on behalf of Ms B, on 10 October 2023 saying the payments were made as part of a scam. In short, they said:

- Santander failed to identify out of character payments that were indicative of fraud. And had Santander intervened appropriately, the fraud would’ve been prevented. As such, Ms B suffered a preventable financial loss which should be reimbursed.
- Ms B should be refunded under the Contingent Reimbursement Model (CRM) code.
- Before investing, as Ms B didn’t know her sister’s friend nor anything about trading, she carried out an online search on F – including checking a well-known review website (that I’ll refer to as ‘T’). Her search didn’t find anything concerning.
- Ms B was told by F she would receive returns of 10% per week and it was risk free.
- This is clearly fraud – shown by the Financial Conduct Authority’s (FCA) warning about F published on 15 November 2021.
- Santander should’ve questioned Ms B with the view to exposing a potential scam. They do not think Ms B’s level of knowledge would’ve stood up to questioning from a fraud expert.

- An appropriate intervention would've led to Santander identifying red flags:
 - The payments being sent to an unregulated third-party broker whom was giving Ms B financial advice.
 - Ms B was sending huge payments directly to F for trading.
 - F promised risk free trading, and unrealistic returns of 10% per week.
- Santander should refund Ms B and pay 8% simple interest.

Santander didn't refund Ms B, saying she authorised the transactions in question and that they weren't liable for any financial loss.

The complaint was considered by one of our Investigators. He didn't think Santander had to do anything further. This was because, while he considered Santander should've spoken with Ms B before processing the payments (including the first £9,000 transaction), he didn't think this would've uncovered the scam or prevented Ms B's loss.

Our Investigator explained that the opportunity arose through Ms B's sister, who she most likely trusted, and that Ms B had received letterheaded documentation from F which would've likely appeared genuine to her. Furthermore, Ms B had spoken with F before investing and there wasn't any negative information about the firm at the time the payments were made. So, while Santander might have had some concerns, they would've been reassured by Ms B having carried out checks on F before proceeding. And the FCA warning about F was published after she made her payments. Our Investigator also didn't think Santander could've recovered Ms B's funds upon being informed of the scam payments.

R disagreed and, in short, they added:

- As a financial institution and expert in fraud, Santander see these types of crypto scams constantly. And they've been warned about these scams continuously for many years by Action Fraud. Therefore, Santander should be aware of the common indicators of this crypto scam.
- Santander should've questioned Ms B. She had no prior crypto experience, and her understanding was limited to information provided by F. And so, Ms B's knowledge wouldn't have withstood even basic questioning by Santander.
- Targeted questioning and education would've led to Santander recognising Ms B was being deceived by a scammer – and at significant risk of financial harm. Their failure to identify this risk meant Ms B's loss was foreseeable and she therefore should be refunded.
- They reiterated that, had Santander intervened, they would've identified red flags.
- An intervention would've exposed the scam – with Ms B saying she was sending the money to invest with F, who weren't regulated to provide such a service.
- Santander would've also seen various information online indicating F to be a scam – including the FCA's warning and online reviews.
- It was therefore within Santander's ability to uncover the scam.

Our Investigator considered the additional points put forward by R, but his position didn't

change. He added that while F may not have been a UK regulated firm, this alone wouldn't have been a red flag. And he reiterated that the FCA's warning about F was published after Ms B made the disputed payments. Furthermore, while Ms B has said she was offered a risk-free investment, the documentation she received states the risks associated with trading (which Ms B signed).

R remained in disagreement and, in short, responded:

- Ms B explained she would've taken Santander's advice had they intervened, and she wouldn't have relied only on the word of her sister – as she is not a financial expert but simply shared the link and telephone number to check out F's site.
- Ms B questioned how our Investigator ascertained the operation of her mind – as there was no evidence that Santander contacted her, or that she was so convinced [by F]. So, he cannot come to that conclusion.
- They provided screenshots from a scam review website that they consider Santander would've seen if they'd looked up F. Had they done this, they would've seen negative reviews and warnings and at this stage, there was a known high fraud risk. And Santander could've enacted Banking Protocol too.

The matter has been passed to me to decide.

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.

I'm very sorry Ms B has lost a significant amount of money. But I must consider whether Santander is responsible for the loss she's suffered. Having done so, and while I realise this isn't the outcome Ms B is hoping for, for similar reasons as our Investigator, I don't think they are. Because of this, I don't think Santander acted unfairly by not refunding the payments. I'll explain why.

Before I do, I want to reassure Ms B that I've considered everything R has submitted on her behalf. And so, while I've summarised this complaint in far less detail than what has been provided, I want to stress that no discourtesy is intended by this. If there is a submission I've not addressed; it isn't because I have ignored the point. It's simply because my findings focus on what I consider to be the central issue in this complaint – that being whether Santander is responsible for the loss she has suffered.

At which point, my first consideration is whether Ms B was the victim of a scam or a failed investment. The FCA warning about F doesn't confirm it isn't a legitimate firm, but rather, it states that they believe F may be providing financial services or products in the UK without their authorisation. This, in itself, isn't enough to say F is a fraudulent firm. Furthermore, I'm mindful that F is currently operating under the regulation of foreign regulators. And that Ms B did receive returns of about £18,000 from F after she made her final payment – including just over £4,000 as part of a settlement agreement. This isn't common practice for a scam firm.

Because of this, and other reasons, whether Ms B has been scammed is a difficult point to resolve conclusively. But for the purpose of this decision, I don't need to make a finding on that point. Instead, I'm focusing on whether action by Santander could've prevented Ms B's loss based on the information available at the time she made the payments.

R has referred to Ms B's payments being refundable under the CRM code - which can offer

a potential means of obtaining a refund following situations like this. The CRM code however doesn't cover debit card payments. I've therefore considered whether it would otherwise be fair and reasonable to hold Santander responsible for Ms B's loss.

In broad terms, the starting position in law is that a bank is expected to process payments that their customer authorises them to make. Here, it isn't disputed that Ms B knowingly made the payments from her Santander account and so, I'm satisfied she authorised them. Therefore, under the Payment Services Regulations 2017 and the terms of her account, Santander are expected to process Ms B's payments, and she is presumed liable for the loss in the first instance.

However, taking into account the regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for Santander to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud.

So, the starting point here is whether the instructions given by Ms B to Santander (either individually or collectively) were unusual enough to have expected additional checks being carried out before the payments were processed.

Ms B typically used her Santander account for monthly direct debit payments and the occasional fund transfer, with those transactions generally of a relatively low value. And so, I consider many of these debit card payments, including the first £9,000 transaction, would've been unusual and out of character for how Ms B normally operated her account. Because of this, I think the payment activity presented a potential risk of financial harm from fraud. So, it would've been reasonable for Santander to have carried out additional checks to establish the surrounding circumstances of the £9,000 payment before it was processed - thereby giving them the opportunity to establish if it was being made for legitimate reasons or not.

I've thought about what would've most likely happened had Revolut done this. I've not seen anything to show Ms B was told – or that she agreed – to mislead Santander about the purpose of the payments if questioned about them. I therefore think it's most likely that, had Santander asked her the purpose of the £9,000 payment and the surrounding circumstances of it, then she would've likely been open and honest.

In turn, I think Ms B would've likely told Santander that she was making the payment to invest with F. At which point, I should note that, in response to our Investigator's view, R has referred to Ms B making these payments for crypto investment purposes. However, their initial complaint submission refers to Nasdaq day trading and F's website advertises forex and CFD trading. I also haven't seen any submission from R evidencing the involvement of crypto – with the initial advert link that has been provided referring to "*Nasdaq, Dow Jones and S&P*" trading and other correspondence referring to CFDs. From this, I'm not satisfied Ms B was making the payment for crypto investment purposes – which carries a known fraud risk due to their increased prevalence in recent years. Nevertheless, there is also risk that would've also been known to Santander with regards to more established investment opportunities. Santander therefore should've been mindful of those too.

Here, upon Ms B informing Santander she was making the payment to invest with F, further appropriate questioning could've included how she had come across this opportunity, what checks she had carried out on F and details of the investment itself. This would've led to Ms B explaining that she had become aware of F through her sister (and possibly her friend). This would've likely been somewhat reassuring to Santander – as it hadn't come via an unsolicited cold call or social media (which carries known fraud risks). R has however said

that Ms B was promised risk free trading, and unrealistic returns of 10% per week – which they said should've been identified as red flags by Santander. I can't be sure what was discussed with Ms B and F. But the documentary evidence that has been provided doesn't mention or infer risk free trading. Instead, for example, it says:

“...I understand that all the trading activities on my account are my responsibility and made by my own decision and I acknowledge that there is a risk of loss associated with investments in high-risk products such as CFDs.”

...

“...I hereby acknowledge that I fully understand the considerable risk of losing involving with the trading and I hereby acknowledge that I clearly and carefully considered all relevant and/or possible circumstances”

Ms B was provided this on multiple occasions and signed it to confirm her agreement. I'm therefore satisfied that the risk of losing money, and it not being risk-free, was made clear to Ms B. Instead, it highlights that CFDs are high-risk products (which is true). This could also similarly explain how Ms B might have been informed of potential returns of 10% per week – as the high-risk nature of CFDs means a greater opportunity for higher returns. So, although such returns cannot be guaranteed, and therefore not promised, it is plausible for it to be achieved.

I should, at this point, explain that Santander didn't have any specific obligation to protect Ms B from potentially risky investments. The investment in F wasn't an investment Santander was recommending or even endorsing. Santander's role here was to make the payment that Ms B had told it to make. Ms B had already decided on that investment. And I find that Santander couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Ms B's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Ms B (which there wasn't here) would've gone far beyond the scope of what I could reasonably expect of Santander in any proportionate response to a correctly authorised payment instruction from its customers.

With this in mind, the fact Ms B would've likely explained she was forex and/or CFD trading wouldn't have necessarily put Santander on notice that she was being scammed. While that underlying risk remained a possibility, customers are allowed to invest in high-risk investments legitimately – that is a risk they can freely take. And while Ms B may have been inexperienced with such trading, again, this wouldn't similarly have meant Santander would've been able to establish – from this alone – that she likely being scammed.

That said, given the high-risk nature of the investment, it would've been reasonable for Santander to have sought reassurances that Ms B had undertaken due diligence before going ahead. This could've, for example, included asking Ms B whether she'd checked the FCA register (to ensure F had the relevant authorisation to undertake regulated activities in the UK) and/or what other checks she'd carried out.

Here, R has confirmed that, before going ahead, Ms B carried out checks online but didn't find anything concerning about F. This included checking T, a well-known review website. It's therefore likely she would've explained this to Santander if asked. Again, this would've reassured Santander that Ms B had taken steps to ensure she was dealing with a legitimate firm. That said, it would've been reasonable for Santander to have enquired as to whether Ms B had checked the FCA register. I understand Ms B hadn't done this, and so it would've

been reasonable for Santander to have advised her to carry out further checks (including checking the FCA website) before making the payment.

In this case, even if Ms B had become aware F wasn't authorised by the FCA, this wouldn't have necessarily put her notice that it was potentially a scam firm. This is because, while not authorised by the FCA, F was registered in a foreign country. And while this means that Ms B didn't benefit from protections provided through dealing with a UK based firm that had the relevant regulatory authorisation, I'm satisfied that F – as per above – did make it clear to Ms B in their documentation that trading was high risk and could result in losses.

Furthermore, even if Ms B had carried out more extensive checks on F online, from my own historical internet search, there is little to suggest it was being reported as a scam firm at that time. This is because, firstly, the FCA warning hadn't yet been published – which, to reiterate, wouldn't be enough to say F is a fraudulent firm. But also, while there were some negative reviews, there were a significantly greater number of positive reviews (whereby successful trading was reported). It's also worth noting that even legitimate firms will receive negative reviews from customers too.

Taking everything into consideration, I'm simply not persuaded that Santander could've, by way of a proportionate enquiry, have uncovered enough information to have had significant doubts about the legitimacy of F at that point of time. Neither do I think Ms B could've either – she wasn't at fault here. And because of this, I accordingly wouldn't have expected Santander to have invoked banking protocol in these circumstances.

I've thought about whether Santander could've done anything to recover Ms B's loss when the scam was reported. But I don't think they could. The only possible option for recovery would've been for Santander to have attempted a chargeback. But there are time limits for chargeback claims to be raised under the card scheme rules. Here, Ms B contacted Santander more than two years after the disputed payments were made – outside of the relevant time limit. And so, there wasn't any prospect of recovery.

I have a great deal of sympathy for Ms B and the loss she's suffered. But it would only be fair for me to direct Santander to refund her loss if I thought they were responsible – and I'm not persuaded that this was the case. For the above reasons, I think Santander has acted fairly and so I'm not going to tell them to 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 Ms B to accept or reject my decision before 8 July 2025.

Daniel O'Dell
Ombudsman