

The complaint

Ms B complains that Santander UK Plc hasn't refunded her after she reported falling victim to a scam.

What happened

The background to this complaint is well-known to both parties, and so I'll only summarise the key details here.

Ms B invested £10,000 with a business I'll refer to as G in August 2018. The premise of the investment was that G would gamble client funds using an algorithm it had developed. Clients were to be paid returns from the winnings.

G did pay returns to clients for some time, up until March 2020. But when the pandemic hit sports fixtures were cancelled and bets couldn't be placed. G kept communicating with clients through this time, but then entered into administration in 2022. The administrator published a report in December 2022 which revealed some concerning details about G. The report stated, among other things:

'while it was initially assumed that (the algorithm G claimed to have developed) was a piece of software, we have since received confirmation that it is actually a very short set of written trading rules.'

'we have seen no evidence that (the algorithm G claimed to have developed) performs as described in the Information Memorandum.'

Ms B reported to Santander that she'd been the victim of a scam. But it said it wasn't able to help. It believed G was a genuine company that had failed, meaning Ms B had a civil dispute against it, rather than it being a case of her having fallen victim to a scam.

Ms B disagreed and brought her complaint to our service.

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'm not upholding it. I know this will come as disappointing news to Ms B. This is a significant sum of money to have lost. And I don't doubt it's had a significant impact on her. But I can't say it would be fair and reasonable to hold Santander responsible for her losses. I'll explain why.

Broadly speaking, the starting position at law is that Santander is expected to process payment instructions it receives from Ms B and to do so quickly. And Ms B will be responsible for any payments made from her account which are properly authorised. This is set out in the Payment Service Regulations (2017) and the terms and conditions of Ms B's account.

But account providers like Santander ought fairly and reasonably to have systems in place to monitor accounts and transactions for signs a customer might be at risk of financial harm through fraud. Where such risks present themselves, it might be fair and reasonable for Santander to warn against proceeding with a payment, perhaps even blocking or suspending it while its purpose can be questioned.

In some cases, where an account provider ought to have intervened but didn't, and where but for that error the customers subsequent loss more likely than not would have been avoided, then it might be fair and reasonable for the bank to reimburse that loss.

This would only apply where the payments were made as a result of a scam, and not where the dispute arises from a civil dispute between a customer and a genuine supplier of goods and services. Santander has said that is why it hasn't reimbursed Ms B here – because she has a civil dispute with G. I must then first determine if that is fair and reasonable. I'm not persuaded it is.

Since G's collapse, and particularly following the administrator's report, there has been significant information available that satisfies me G was more likely than not operating a scam, more specifically a Ponzi scheme. Some key points to support that position are:

- The algorithm G claimed to have developed – supposedly based on artificial intelligence and self-improving – didn't exist. The only evidence of a system of any sort being in place was a very short set of written trading rules;
- More than 41% of funds invested by clients was paid out to introducers to G. That's an incredibly high percentage and indicative that funds were not being used in the way investors intended;

However, that Ms B has more likely than not fallen victim to a scam isn't enough to say that Santander must reimburse her. It must also be the case that Santander made an error in failing to mitigate against the foreseeable risk of harm to Ms B, and that such an error led to her loss.

Ms B was making a payment of £10,000 from her account to a new payee. That's clearly a large sum and so did represent a risk. I've not seen evidence of similar sized payments being made from her account, and so I think it's fair and reasonable to say Santander ought to have questioned the payment before allowing it to be made, with a conversation taking place as to its purpose.

I've seen no evidence to suggest Santander did step in. Ms B has mentioned no interventions from the bank. And, in its response to this complaint, Santander has only said it required the use of a one-time passcode for the payment to go through. So I can fairly and reasonably conclude that Santander did make an error here as it didn't take additional steps to protect Ms B.

I'm not persuaded though that, but for that error, Ms B's losses would have been avoided. I consider it to be more likely than not Santander would have been unable to detect the scam at the time and that Ms B would more likely than not have proceeded with the payment.

It's important to note here that it wouldn't have been for Santander to comment on the wisdom or suitability of any investment. Instead, it would be asking questions as to the purpose of the payment, and perhaps how the opportunity had been discovered, to see if there were any significant warning signs that Ms B might be caught up in a scam.

This service is aware, from Ms B's complaint and others involving G, that the scheme was

very sophisticated and persuasively presented to investors. There was professional literature and a persuasive sales pitch. There were brokers involved that appeared to believe the scheme was genuine and who were recommending the investment. And G was owned and run by a number of high-profile sports personalities, giving it a significant degree of credibility.

Such was the apparent success of the scheme that it ran for several years before being uncovered as a scam, and only after G's complete collapse. The information that revealed G as a scam only came to light once administrators became involved and investigated.

I accept that it is possible Ms B might not have proceeded, even if Santander had only asked a few questions and given a general warning about investment scams despite having no real concerns. But, based on all the evidence and information I have, I don't find that's what would more likely than not have happened.

As I've not found that Santander's error – in not questioning the payment – has led to Ms B's loss, I can't fairly and reasonably conclude that it now needs to reimburse Ms B's loss.

My final decision

I don't uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 28 November 2024.

Ben Murray
Ombudsman