

The complaint

Mr and Mrs D complain that Santander UK Plc won't refund the money they lost after Mr D fell victim to a scam.

What happened

In May 2018, Mr D received a phone call from someone who said they worked for an investment firm – which I'll call R – they said that Mr D had previously made an enquiry with them. This person told Mr D that they could offer him a risk-free trial of their trading platform whereby if Mr D invested £500 he would get that initial investment back if he didn't make a profit in 30 days. Mr D felt this was a good opportunity and, having found no adverse information when he carried out an internet search for R, supplied his ID and details so he could register with the platform. Mr D made his initial investment of £500 from a sole account he held with Santander on 3 May 2018.

Mr D could see that he had made profits on the trading platform, so on 18 June 2018 he invested a further £4,500 in the scheme, again from his sole Santander account. Over the next few months Mr D could see that he was making more profits on his investment, so on 8 October 2018 he made one final payment to the scheme, for £10,000. This payment was from his joint account with Mrs D, and is the subject of this complaint. Unfortunately, and unknown to Mr D, the person he was dealing with was not legitimate, they were a scammer. His funds had not gone into a legitimate trading platform, nor had he made any profit, the scammer had taken his money.

The scam came to light when Mr D discussed his investment with a friend, who said it all seemed suspicious. This prompted Mr D to try and withdraw his profits, and when the scammers said this would take two months, he tried to log into his trading account and found it had disappeared. He tried to contact the scammer but was no longer able to reach them and at this point he realised he had been scammed.

Mr D contacted Santander about the scam payments and it looked into what had happened, but it did not agree it was liable for his loss. It said it had provided appropriate warnings and that Mr D had not done enough to ensure R was legitimate before investing. Mr D wasn't happy with Santander's response, so he and Mrs D brought a complaint to our service.

An Investigator looked into the complaint and they felt that Santander should have done more to intervene in the payment made from Mr and Mrs D's joint account. They felt that, had Santander done so, it would have been able to prevent Mr and Mrs D's loss, so they recommended that Santander refund the £10,000 to Mr and Mrs D, plus interest. Our Investigator also did not consider that Mr and Mrs D should share any responsibility for their loss here.

Santander disagreed with the Investigator's opinion, saying that the payment had not been unusual enough to warrant further intervention. It also maintained that Mr D had ignored red flags about the investment which should have indicated to him that what he was doing might not be legitimate.

As no agreement could be reached, this case has now been passed to me for a 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 overall outcome as the investigator, I'll explain why.

It's not disputed that Mr D authorised the payment that is the subject of this complaint. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr and Mrs D are responsible for that payment. That remains the case even though Mr D was the unfortunate victim of a scam.

Because of this, Mr and Mrs D are not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr and Mrs D, or whether it should have done more than it did.

The payment that is the subject of this complaint was for £10,000, and I've looked carefully at Mr and Mrs D's statements to see if this payment merited intervention from Santander. Given the way that Mr and Mrs D used their account, I'm satisfied that it was unusual enough to merit some intervention from Santander.

I can see that in the ten months prior to the scam Mr and Mrs D had made a number of payments out of their account for between £4,000 and £10,500. However, most of these payments seem to have been to well established payees, or to Mr D's own accounts. There was one payment for £10,500, in June 2028 which was also to a new payee, and Santander did intervene in that payment to ensure it was legitimate. Santander has said that when Mr D then made the £10,000 payment to the scam it wasn't flagged as unusual as he had relatively recently made a similar sized payment.

But I don't agree that one higher value payment to a different new payee, several months earlier, means that the £10,000 scam payment should have been considered as less risky. £10,000 was still a very large amount to be sending and this payment was to a new payee that Mr D had not paid before. Santander did ask Mr D the reason for this payment, and Mr D selected 'transfer to an investment' which led to him being shown a general investment scam warning. This warning said that Mr D should be wary of anyone cold-calling him with an investment opportunity. But given that, by this stage, Mr D had been investing with R for around five months and believed he had made a reasonable profit, I can understand why this warning would not have resonated with him. In any case, I consider that it would have been reasonable, given the risk presented by this payment, for Santander to have questioned Mr D more directly about what he was making the payment for, to ensure that he was not at risk of financial harm.

It doesn't appear Mr D was given a cover story by the scammer, to use in the event of genuine contact from Santander. And so, it seems more likely than not that he would have explained the true purpose of the payment – that it was for an investment opportunity, that he had found that investment opportunity following an unexpected phone call, and that while

he had paid funds in and seen profits in the platform, he had not actually withdrawn any funds. And had Santander appropriately questioned Mr D here I'm satisfied it would have had some concerns about what it was being told, given its knowledge of such scams. That ought to have then led to a strong warning about investment scams, such as the dangers of investing with non-regulated firms, and the provision of education on how to avoid them. I'm not persuaded Mr D would have simply ignored what he was being told, particularly given that when a friend of his expressed concerns after the payment had been made Mr D took steps to try and withdraw his funds, hence exposing the scam. It seems more likely than not that a strong warning from Santander would have led to him taking some similar action, hence uncovering the scam at an earlier stage when he was unable to withdraw his supposed profits. So, I think it's more likely than not the payment to the scam could have been prevented, had Santander intervened in this way.

I have also considered whether Mr and Mrs D should bear some responsibility for their loss by way of contributory negligence. Having thought carefully, I don't consider that Mr and Mrs D should share responsibility for their loss, I say this for the following reasons:

When Mr D was first contacted by the scammer, he carried out some online research into R. I think it is worth noting that there was a legitimate business associated with R, albeit one registered in Gibraltar, and that the scammers were apparently using R's details in order to convince victims that this was a legitimate investment opportunity. Warnings were published about R in 2019, by the Gibraltar Financial Services Commission (stating that R was a cloned company) and by the Financial Conduct Authority (stating that R was not authorised or registered by the FCA), but there were no warnings available about R at the time Mr D was investing. So, Mr D's research would not have brought up any information that might have been cause for concern at that time.

Mr D has also said that there was a professional looking trading platform which appeared to show details of profits and losses. When signing up to the investment he'd also had to provide ID and had received emails from various individuals, adding to the appearance of legitimacy. I appreciate that Santander has identified some issues – such as Mr D paying a UK account for an apparently Gibraltar based company, the initial 'risk-free' trading period that Mr D was offered, and the relatively high level of returns he believed he'd received – which it considers should have been red flags to Mr D. But Mr D does not appear to have been an experienced investor, and given that by the time of the payment that is the subject of this complaint he believed he had been successfully trading with R for around 5 months, and thinking about the information he had seen about R, I'm satisfied that he did not act unreasonably. So, I am satisfied there was no contributory negligence on this occasion.

In the circumstances I am satisfied Santander should fairly and reasonably reimburse Mr and Mrs D for the loss they suffered, without any reduction, together with interest to compensate them for being deprived of the money they lost.

Putting things right

To resolve this complaint Santander should:

- Pay Mr and Mrs D £10,000 representing their loss to the scam from this account.
- Pay 8% simple interest per annum on that amount from the date of the payment to the date of settlement.

My final decision

I uphold this complaint. Santander UK Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs N to accept or reject my decision before 7 November 2024.

Sophie Mitchell
Ombudsman