

## The complaint

Mr C complains that Santander UK Plc didn't protect him from an investment scam.

Mr C is being supported in making his complaint by a representative. But for ease, I'll only refer to Mr C in this decision.

## What happened

Mr C says that in 2017, whilst socialising with his wife at a party, he met (Mr P) who provided him with information about an investment in forex trading with a company (which I'll refer to here as 'H'). As I understand it, Mr P worked for an unregulated broker (which I'll refer to here as 'E').

Mr C then received a large financial windfall from his father and so contacted Mr P to find out more about investing with 'H'.

Mr C says he and his wife met with representatives of 'H' at its offices to find out more about the investment and to check its legitimacy. Mr C says he was shown documents about the investment and assured 90% of his capital would remain safe, with guaranteed returns on his investment of 2.5% per month. Mr C also said Mr P answered his questions about the investment and '*provided assurances of safety in his investment*', as well as arranging meetings with current investors.

Another company (which I'll refer to here as 'G') facilitated the returns on the investment.

Mr C made the following payment in branch:

Date	Amount
20/02/2018	£50,000 (plus £25 fee)

Mr C says the payment wasn't flagged by Santander and that no warnings were provided to him, or questions asked about the payment purpose - only that he was asked in branch if he was happy to make the payment. Santander has said Mr C was questioned about the payment and that he was unaware it was being made to an account in the United Arab Emirates (UAE) and didn't state a payment purpose.

In May 2018 Santander's fraud team investigated the payment in more detail as it was concerned that Mr C's lack of knowledge when questioned in branch together with the payment size, might indicate he was the victim of a scam.

On 14 May 2018 Santander called Mr C to understand more about the payment. Mr C assured Santander the payment was legitimate.

'H' went into liquidation in June 2019 and allegations that 'H' was operating as a scam came to light during the liquidation process which included a court hearing in 2020. Mr C has been unable to recover any of his funds.

On 29 October 2023 Mr C made a complaint to Santander. In short, he said he'd been the victim of scam and that Santander hadn't done enough to protect him. Mr C therefore held Santander responsible for his loss. He wanted it to refund him the £50,000 together with 8% interest, as well compensation for the distress and inconvenience caused.

Santander replied to say it had done nothing wrong. Essentially, it said no banking error had been made and the payment was authorised by Mr C whilst in branch. It said it had questioned Mr C about the payment, and this included providing him with scam warnings.

Mr C referred his complaint to the Financial Ombudsman. In summary, he said if Santander had warned him about the risks associated with unregulated investments when he made the £50,000 payment, his loss would've been prevented.

One of our Investigators considered the complaint but didn't uphold it. He found that it was likely Mr C had been the victim of an investment scam and said that Santander had questioned Mr C about the payment both at the time and a few months later, but he still wanted to go ahead with it and wasn't completely honest about the circumstances.

And so, our Investigator thought any further probing by Santander before processing the payment was unlikely to have prevented Mr C's loss. Our Investigator was also satisfied that Santander had done all it could to try and recover the lost funds.

Mr C didn't agree. He welcomed that it had been recognised he'd been the victim of a scam – but didn't agree that he'd have still gone ahead with the payment if Santander had provided a proportionate intervention before processing it.

Mr C said Santander's actions in May 2018 showed that it did have concerns about the payment – but maintained that it didn't question him about it at the time it was made. He said the contact in May 2018 was an attempt by Santander to 'backtrack' on its failing not to question him more deeply when he made the payment in branch.

Mr C also said that his interactions with Mr P and his research into 'H' shows that he had some concerns about the investment and:

*'... had [Santander] acted in the appropriate manner and expressed such concerns as would have been apparent to them had they appropriately queried [Mr C], [he] would not have proceeded with the transaction'.*

I've been asked to review everything afresh and reach a final 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 decided not to uphold this complaint. I know this is not the answer Mr C was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation he's found himself in, and I can understand why he'd want to do all he can to recover the money he lost. But I need to decide whether Santander can fairly and reasonably be held responsible for Mr C's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I'd like to say at the outset that I've considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Santander could've prevented Mr C's loss.

I accept the £50,000 transaction Mr C made was an authorised payment. So, Mr C is presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a bank, such as Santander, ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether Santander ought reasonably to have held such suspicions or concerns in relation to Mr C's £50,000 payment — and if so, what might've been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if Santander acted fairly and reasonably in its dealings with Mr C when he made the £50,000 payment. Specifically, whether it should've done more than it did before processing the payment — and if it had, would that have made a difference. I also need to decide if Santander could've reasonably recovered the lost funds.

Whilst there is some dispute between Mr C and Santander as to the level of interaction between them in branch when the payment was made; I don't think there is any disagreement here that the £50,000 payment was out of character for Mr C — and posed an increased level of risk as it was being made to a new international beneficiary.

Further to that, where there is an interaction between a customer and a bank before a payment is processed, as there was here, I'd expect the bank to take reasonable steps to understand the circumstances of that payment.

But for me to find it fair and reasonable that Santander should refund the payment to Mr C requires more than a finding that Santander ought to have intervened.

I would need to find not only that Santander failed to intervene where it ought reasonably to have done so — but crucially I'd need to find that but for this failure the subsequent loss would've been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by Santander wouldn't have revealed the payment was part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented it from being made.

In thinking about this, I've considered what a proportionate intervention by Santander at the relevant time would've constituted, and then, what I think the result of such an intervention would most likely have been.

To reiterate, Santander's primary obligation was to carry out Mr C's instruction without delay. It wasn't to concern itself with the wisdom or risks of his payment decision.

In particular, Santander didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in 'H' wasn't an investment Santander was recommending or even endorsing.

Santander's role here was to make the payment that Mr C had told it to make. Mr C 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 Mr C's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr C (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.

That said, I think it would've been proportionate here for Santander, as a matter of good industry practice, to have taken reasonable steps to establish more information about this payment when it spoke to Mr C in branch. What matters here is what those steps might be expected to have uncovered at the time.

While there may now be significant concerns about the operation of 'H', and the legitimacy of the investment, I must consider what Santander could reasonably have established during a proportionate enquiry to Mr C about his payment back in February 2018. I cannot apply the benefit of hindsight to this finding.

Any concerns Santander might've had before it processed the payment would likely have been informed by the information Mr C provided as part of that proportionate enquiry. And helpfully, I do know how Mr C responded to Santander when it asked him about the payment in May 2018. This is significant, as it provides a helpful insight into how Mr C is likely to have responded if Santander had questioned him in this manner before the payment was processed.

I've listened to the telephone call between Mr C and Santander in May 2018. Santander says it has concerns over the £50,000 payment – primarily linked to 'H' being based in the UK – yet the payment going to an account in the UAE, and that 'H' wasn't FCA regulated. Mr C says this is '*all fine*'. He also confirms that he has done checks into 'H'.

Santander then asks Mr C how he found out about 'H'. Mr C says he appreciates Santander's concern, but everything is fine, and this is '*his business*'.

Santander asks Mr C if he was making an investment and he says it is '*just a loan*' and a '*private matter*' which is 100% secure and he's confident with. Santander pushes Mr C to explain what the '*loan*' is for – but he assures Santander everything is fine and asks that it respect his privacy.

Mr C also confirms that he was questioned about the payment whilst in branch and read a scam warning. He reiterates that he is '*all good*' and it is '*all fine*'. He says he hadn't been contacted online, and that it was linked to someone he's known for a while who he considers to be a friend.

Santander specifically asks Mr C if there is anything else he wants to say and that it seems like he was '*holding back*' information. Mr C says he doesn't want the bank to know his business as a point of principle.

Firstly, I don't think what prompted the May 2018 phone call to Mr C is of significance here. What is significant is that Mr C confirms during that phone call that he was questioned in the branch about the payment, which suggests some checks were carried out. Santander then had concerns about the payment - hence it's investigations into 'H' and further questioning of Mr C. I think, overall, Santander's actions here were fair and proportionate; and I can't reasonably criticise it for trying to protect Mr C.

I also think Santander's response to the risk it identified was proportionate. It asked Mr C what the payment was for, specifically, if it was for an investment (which Mr C wouldn't confirm). Santander also explained its concerns over 'H' not being regulated by the FCA and how many payments of this nature end up being scams. And it wanted to understand more about the person who had been advising Mr C about the payment. But again, Mr C was quite vague here.

So, I've thought next about whether Santander applying this level of security *before* processing the payment would've likely prevented Mr C's loss. As I go on to explain, I don't think it would've.

I can see that Mr C carried out his due diligence before deciding to invest in 'H'. It had been his choice to invest, and he'd researched the investment in detail for some six months before making the payment. Mr C knew the investment was unregulated, met with current investors as well as with representatives of 'H'. He also asked several questions to Mr P about 'H's accounts, as well as linked companies such as 'G'. On every occasion Mr P was able to provide assurances to Mr C that everything was legitimate and genuine. So, I can completely understand why Mr C might've been somewhat dismissive of Santander's questions. In his mind, there was no doubt that the investment was genuine.

But Santander could only base its responses on the information it got from Mr C. And I've no reason to doubt that he wouldn't have responded in similar terms if questioned by Santander in more depth when he made the payment in branch, as he did when questioned in May 2018.

It's also worth remembering that while there may now be significant concerns about the operation of 'H', and the legitimacy of the investment, 'H' was a genuine company and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Allegations that 'H' was operating as a scam *only* came to light during the liquidation process which included a court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either Santander or Mr C at the time the £50,000 payment was made.

Taking all this into account, I can't therefore say, on balance, that any further probing by Santander in February 2018 is likely to have prevented Mr C's loss.

I've also considered how Mr C found out about the investment. 'E' was unregulated, and I can see that Mr P was clear with Mr C in an email dated 22 August 2017 that 'H' was also unregulated. But this type of unregulated investment could be entered into without obtaining regulated financial advice; and might be made available to clients of an unregulated adviser (as Mr C was).

So, the status of 'E' and the investment weren't something that would necessarily have indicated 'H' was fraudulent (or that the investment was a scam) at the time Mr C asked Santander to make the payment.

I've also thought about the relationship between Mr C and Mr P. I appreciate that this relationship was established by way of a chance meeting in 2017 – but it is clear from the correspondence between Mr C and Mr P, that Mr C had complete trust in him.

Mr P had also told Mr C that his parents were investing in 'H' and that he was arranging meetings between Mr C, other investors, and representatives of 'H' to discuss the investment in more detail. Mr P was also very knowledgeable about the workings of 'G' – saying he'd carried out his own research to understand its part in the investment process. He told Mr C:

*'This will also give me a chance to ensure and verify personally that the new banking and payments structure is robust before I take yourselves forwards as a new client'.*

And Mr P confirmed to Mr C that:

*'The liquidity provider ... who will store 90% of your funds at any given time are fully FCA regulated'.*

Mr C didn't divulge the existence of Mr P (or 'E') to Santander during the May 2018 phone call - but even if he had, given this communication, I don't think, on balance, that any advice or warning from Santander about 'E' in terms of its regulation would've likely resonated with Mr C or given him any cause for concern. And any concerns that might've been raised with Mr C about 'H' would've likely, in my opinion, have been allayed by Mr P.

All things considered; I don't think it would've been readily apparent in February 2018 that 'H' might be fraudulent rather than a higher risk investment. From the evidence I've seen, I simply don't think Santander could readily have uncovered information – especially through proportionate enquiry of Mr C in response to the £50,000 payment - that would've led to significant doubts about the legitimacy of 'H' at that point in time. Neither do I think Mr C could've uncovered such information at the time – he'd done all he could to assure himself of 'H's legitimacy and wasn't at fault here.

In terms of trying to recover the lost funds; I'd expect Santander to attempt this at the point it's alerted to the loss. But more than five years had passed by the time Mr C contacted Santander. Furthermore, 'H' had gone into liquidation by this point.

Therefore, whilst Santander did try to recover the lost funds, I don't think it had any reasonable prospect of doing so in 2023 given the passing of time; and because 'H' had gone into liquidation more than four years before.

I have a great deal of sympathy for Mr C and the loss he's suffered. But it would only be fair for me to direct Santander to refund his loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

### **My final decision**

My final decision is that I don't 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 10 December 2024**.

Anna Jackson  
**Ombudsman**