

## The complaint

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

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

## What happened

Mr M has explained that a friend of a friend (Mr F) introduced him to an investment with a company (which I'll refer to here as 'H') in relation to Forex trading. Mr M said Mr F told him he had been investing with 'H' for a number of years and had been receiving returns. And that Mr F arranged a meeting with a broker (which I'll refer to here as 'B'), who he had met over lunch, where they discussed the investment opportunity in more detail. Mr M also mentioned he visited H's office and met a couple of the team members, further increasing his confidence in the investment.

Mr M said that 'B' provided him with information on how the investment with 'H' would work. He received detailed information about the investment from 'B', and he was provided with a loan agreement dated 17 October 2018. Mr M invested a total of £50,000 in 'H', with the funds sent via a firm which I'll refer to as 'G'.

Mr M made the following payments as part of the scam:

Date	Amount
22/10/2018	£50,000
22/10/2018	£645
<b>Total:</b>	<b>£50,645</b>

Mr M has said the £645 was a fee for 'G's' services.

Mr M received returns of £2,500 on his investment, with £750 being paid to Mr F as his commission for introducing Mr M to the investment opportunity. As a result, Mr M received a total payment of £1,650 into his Santander account.

'H' went into liquidation in June 2019.

On 15 December 2023, Mr M made a complaint to Santander. In short, he said he had been the victim of a scam, and that Santander had not done enough to protect him. Mr M therefore held Santander liable for his loss and he wanted Santander to refund him a total of £50,645 together with 8% interest and £1,000 for the trouble and upset caused.

Santander said it had done nothing wrong. It said it processed the £50,000 payment in line

with Mr M's instructions which he made in branch.

Mr M referred his complaint to the Financial Ombudsman. One of our Investigators considered the complaint but didn't uphold it. She said Santander should have flagged the £50,000 payment as suspicious and questioned Mr M about the payment. But she did not think this would have prevented Mr M's loss – mainly because there was no adverse information about 'H' available at the time, and any questioning from Santander would not have given Mr M any obvious cause for concern. Our Investigator also thought Santander had no reasonable prospect of recovering the lost funds.

Mr M did not agree and so the case has been passed to me to make a final decision.

In short, Mr M said Santander have a duty of care to protect their customers, especially given the unusual nature of the £50,000 payment. Mr M feels Santander should have heightened scrutiny on the transaction and if an intervention had taken place to establish the reason for the payment, he feels it would have made him reassess the transaction and potentially avoid the loss he has suffered. And so, he considers the bank failed to adequately protect him when making the high value transaction.

Santander have provided our service with the branch scam chat that was applicable when the payment was made in branch in 2018.

### **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 M was hoping for and so this will come as a disappointment. I'm really sorry to hear that Mr M has been a victim of a scam, and I can understand why he wants to do all he can to recover the money he has lost. But I need to decide whether Santander can fairly and reasonably be held responsible for Mr M's loss. Overall, I've decided that it can't be. I'll explain why.

I would 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 have prevented Mr M's loss.

Following a court hearing in July 2020, it's now accepted that Mr M has likely been the victim of a scam. But the transactions he made in October 2018 were authorised payments, so Mr M 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 M's payments — 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 M when he made the payments. Specifically, whether it should have done more than it did before processing the payments – and if it had, would that have made

a difference. I also need to decide if Santander could have reasonably recovered the lost funds.

Arguably, there was justification here for an intervention by Santander prior to processing Mr M's £50,000 payment instruction. The payment was significantly larger than usual payments for Mr M's account and were being made to a new payee.

But for me to find it fair and reasonable that Santander should refund the payments to Mr M 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 prevent a payment being made. And if I find it more likely than not that such a proportionate intervention by Santander would not have revealed the payments were part of a fraud or scam, then I could not fairly hold it liable for not having prevented them from being made.

In thinking about this, I've considered what a proportionate intervention by Santander at the relevant time would have looked like, 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 M's instructions without delay. It wasn't to concern itself with the wisdom or risks of their payment decisions.

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 unregulated investments. The investment in 'H' wasn't an investment Santander was recommending or even endorsing.

Santander's role here was to make the payments that Mr M had told it to make. Mr M had already decided on that investment. And I find that Santander could not have considered the suitability or unsuitability of a third-party investment product without itself assessing Mr M's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr M (which there was not here) would have 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 steps to establish more information about these payments before processing them. 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 M about his payments back in October 2018. I cannot apply the benefit of hindsight to this finding.

'H' was a genuine company and there was no negative information about it in the public domain until after it went into liquidation (June 2019). Having carefully reviewed all the material Mr M has provided about 'H', it appears that allegations that 'H' was operating as a scam only came to light during the liquidation process which included the court hearing in

2020. As such, this correspondence or information could not have been accessed by either Santander or Mr M at the time the payments were made.

I think it's also likely Mr M would have told Santander about 'H's previous trading history, together with a private loan agreement, all of which appeared entirely genuine.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H', everything I've seen indicates that these concerns only began to surface in the public domain after the relevant payments were made by Mr M.

I've thought next about how Mr M found out about the investment. Mr M has said that whilst the investment was first mentioned by a friend of a friend, his main dealings was with 'B'. 'B' appears to be an unregulated broker.

Had Santander asked Mr M who had advised him about the investment, then the involvement of 'B' would've likely come to light at the time. But this type of unregulated investment could be entered into without obtaining regulated financial advice – as seems to have been the case here.

So, the regulatory status of the investment and how Mr M was introduced to it was not something that would necessarily have indicated 'H' was fraudulent (or that the investment was a scam) at the time Mr M asked Santander to make the payments.

Further to that, I've not seen any evidence to suggest Mr M ever doubted the advice he was being given by 'B', especially as Mr M had visited 'H's offices and observed its operations. And the fact that Mr F had invested with 'H' (and received returns) – would have, I think, further reassured Mr M that his money was not at obvious risk, nor that the returns were unrealistic.

Given this background, I don't think, on balance, that any advice or warning from Santander about 'H', or about unregulated investments more generally, would have likely resonated with Mr M. And in my opinion, any concerns Mr M did have would have been allayed by 'B' or by Mr F.

All things considered; I don't think it would have been readily apparent in October 2018 that 'H' might be fraudulent rather than a higher risk investment. I simply don't think Santander could readily have uncovered information – especially through proportionate enquiry in response to a payment - that would have led to significant doubts about the legitimacy of 'H' at that point in time. Neither do I think Mr M could have uncovered such information at the time – he was not at fault here.

To recap, I can only reasonably expect any intervention or enquiries made by Santander to have been proportionate to the perceived level of risk of 'H' being fraudulent. I don't think that a proportionate enquiry in October 2018 would have led to either Santander or Mr M considering 'H' to be anything other than legitimate. With that in mind, and all things considered, I'm not persuaded that Santander was at fault for carrying out the relevant payment instructions, or for not preventing Mr M from making their payments.

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 M contacted Santander. Furthermore, 'H' had gone into liquidation by this point.

Therefore, I can't say Santander had any reasonable prospect of recovering the funds in December 2023 given the passing of time; and because 'H' had gone into liquidation.

I have a great deal of sympathy for Mr M and the loss he has 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 do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 April 2025.

Israr Ahmed  
**Ombudsman**