

## The complaint

Mr and Mrs S complain that Santander UK Plc didn't protect them from an investment scam.

Mr and Mrs S are being supported in making their complaint by a representative. But for ease, I'll only refer to Mr and Mrs S in this decision.

## What happened

Mr and Mrs S have said that a family member introduced them to a broker (who I'll refer to here as 'E') about an investment with a company (which I'll refer to here as 'H') in relation to forex trading. Mr and Mrs S have said the family member had a positive experience of 'E', having successfully invested through them previously.

Mr and Mrs S understood the terms of the investment to be monthly returns of 5%. They entered into a loan agreement with 'H' on 12 April 2018 for the sum of £50,000.

Mr and Mrs S made the following payment in branch as part of the investment:

Date	Amount
17/4/2018	£50,000 (Plus £25 fee)
	<b>£50,025</b>

Mr and Mrs S have said Santander asked no questions about the payment, nor did it provide any warnings.

Mr and Mrs S say they got a return on the investment in May 2018 (£2,500), but that nothing further was received. They got several emails from 'E' explaining why returns had been delayed, and assuring them 'H' was legitimate, but eventually came to the realisation that they'd been the victims of a scam.

'H' went into liquidation in June 2019.

On 28 November 2023 Mr and Mrs S made a complaint to Santander. In short, they said they'd been the victims of a scam, and that Santander hadn't done enough to protect them. Mr and Mrs S therefore held Santander responsible for their loss. They wanted Santander to refund them the £50,025 together with 8% interest, and an award for the distress and inconvenience caused.

In summary, Santander said it didn't consider an error had occurred and so wouldn't reimburse the funds. It considered this to be a civil dispute. Santander did try to recover the lost funds, but this was unsuccessful.

Mr and Mrs S referred their complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, he said Santander should've questioned Mr and Mrs S about the £50,000 payment. But given there was no adverse information about 'H' available at that time, and because they'd been introduced to the investment by a trusted family member, via 'E', our Investigator didn't think further questioning by Santander would've given it or Mr and Mrs S any obvious cause for concern. He also thought there was no reasonable prospect of Santander being able to

recover the lost funds, nor did he think there were grounds to award Mr and Mrs S any compensation.

Mr and Mrs S didn't agree. Essentially, they concurred with our Investigator that Santander should've questioned them about the payment but said that it shouldn't have released it until it was fully satisfied the investment was legitimate.

Mr and Mrs S also said Santander should've warned them of the risks associated with unregulated investment schemes; and that as lay people with no prior investment experience, they would've heeded any warnings Santander, as the '*financial expert*', provided them with.

Mr and Mrs S said Santander should've asked them to provide more details about the investment, at which point it would've seen a '*plethora of information*' which would've given cause for concern.

Mr and Mrs S maintained that if Santander had carried out '*appropriate*' checks and relayed its concerns to them – they wouldn't have proceeded to make the £50,000 payment.

The case has now been passed to me for 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 and Mrs S were hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation they've found themselves in, and I can understand why they'd want to do all they can to recover the money they lost. But I need to decide whether Santander can fairly and reasonably be held responsible for Mr and Mrs S's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say at the outset that I have 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 and Mrs S's loss.

Following a court hearing in July 2020, it's now accepted that Mr and Mrs S have likely been the victims of a scam. But I accept the transaction they made towards the investment was an authorised payment. So, Mr and Mrs S are 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 at the time.

The question then arises whether Santander ought reasonably to have held such suspicions or concerns in relation to Mr and Mrs S's 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 and Mrs S when they made the £50,000 payment. Specifically, whether it should've done more than it did before processing it – and if it had, would that have made a difference. I also need to decide if Santander could've reasonably recovered the lost funds.

Arguably, there was justification here for an intervention by Santander prior to processing Mr and Mrs S's £50,000 payment instruction on 17 April 2018. This was significantly larger

than usual payments for Mr and Mrs S's account in the previous 12 months and was being made to a new, international payee.

Further to that, where there is an interaction between a customer and a bank before a high value 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 conclude Santander should refund the payment to Mr and Mrs S 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 £50,000 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 and Mrs S's instructions without delay. It wasn't to concern itself with the wisdom or risks of their payment decision.

In particular, Santander didn't have any specific obligation 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 and Mrs S told it to make. Mr and Mrs S 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 and Mrs S's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr and Mrs S (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 steps to establish more information about the £50,000 payment.

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 and Mrs S about their payment back in April 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 and Mrs S have provided about 'H', it appears that allegations that it 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 and Mrs S at the time the April 2018 payment was made.

I think it's also likely Mr and Mrs S would've told Santander that they had documents from 'H' confirming the terms of the investment, including a loan agreement, which at the time all appeared entirely genuine.

Mr and Mrs S have also said Santander should've warned them about unregulated forex investments, and that they would've heeded any warnings Santander gave them about the investment in 'H' being high risk.

Firstly, as I've outlined above, it wasn't Santander's role to provide Mr and Mrs S with investment advice. Secondly, 'H' makes it very clear in its documentation that it is unregulated and states that:

*'Before you decide to deal with ['H'] ... you should be aware of all of the associated risks and carefully consider your objectives, financial situation, needs and level of experience. ... ['H'] recommends that you seek advice from a separate financial advisor. By trading, you could sustain a total loss of your deposited funds and therefore, you should not speculate with capital that you cannot afford to lose.'*

So, Mr and Mrs S *had* been made aware of the risks involved and were getting financial advice (from 'E'). This suggests to me that even if Santander had warned Mr and Mrs S about risks associated with unregulated investments, they'd have been reassured any risk was being mitigated by the fact they were being guided through the investment process by 'E'.

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 £50,000 payment was made by Mr and Mrs S. And so even if Santander had asked more questions of Mr and Mrs S or asked them to provide paperwork about the investment, I don't think, on balance, this would've uncovered any information to indicate Mr and Mrs S were at risk of financial harm.

I've thought next about how Mr and Mrs S found out about the investment. They've said the investment came about through a family member who introduced them to 'E'. 'E' is an unregulated broker, and this is clear from their email correspondence with Mr and Mrs S.

Had Santander asked Mr and Mrs S who'd advised them about the investment, then the involvement of 'E' 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 and Mrs S were introduced to it weren't something that would necessarily have indicated 'H' was fraudulent (or that the investment was a scam) at the time Mr and Mrs S asked Santander to make the £50,000 payment.

Further to that, I can see from the emails sent to Mr and Mrs S from 'E' about the delayed returns that 'E' clearly had a very close affiliation with 'H', as well as other clients investing in 'H'. And even when returns had been delayed for some months, 'E' had no obvious concerns 'H' wasn't genuine. It told Mr and Mrs S

*'... please let me state that there are no issues with trading and no issues with ['H'].'*

Mr and Mrs S have also said that their family member had used the services of 'E' before and was receiving returns on their investments.

Given all this, I don't think, on balance, that any advice or warning from Santander about 'E' would've likely resonated with Mr and Mrs S or given them any cause for concern. And any concerns that might've been raised about 'H' would've likely, in my opinion, have been allayed by 'E' or by Mr and Mrs S's family member.

All things considered; I don't think it would've been readily apparent in April 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've led to significant doubts about the legitimacy of 'H' at that point in

time. Neither do I think Mr and Mrs S could've uncovered such information at the time – they weren't 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 April 2018 would've led to either Santander or Mr and Mrs S considering 'H' being anything other than legitimate. With that in mind, and all considered, I'm not persuaded that Santander was at fault for carrying out the relevant payment instructions, or for not preventing Mr and Mrs S from making the £50,000 payment.

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 – which it did but no funds remained. But more than five years had passed by the time Mr and Mrs S 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 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 and Mrs S and the loss they've suffered. But it would only be fair for me to direct Santander to refund their 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 S and Mrs S to accept or reject my decision **before 27 March 2025**.

Anna Jackson  
**Ombudsman**