

## The complaint

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

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

## What happened

Mr B and Mr W say that in 2017 a relative put them in contact with a representative of a company (who I'll refer to here as 'B') about an investment in forex trading with a company (which I'll refer to here as 'H').

Mr B and Mr W say that 'B' provided them with information on how the investment with 'H' would work, and that it would be facilitated by a linked company (which I'll refer to here as 'P').

Mr B and Mr W received detailed information about the investment from 'B', including details of a capital protection scheme and 'H's investment background and success rates. They were provided with a loan agreement dated 16 April 2018.

Mr B and Mr W invested a total of £80,000 in 'H' via two bank accounts. All payments were made to 'P'. Payments from their Santander account were as follows:

Date	Amount
11/4/2018	£20,000
16/4/2018	£25,000
16/4/2018	£5,000
<b>Total</b>	<b>£50,000</b>

Mr B and Mr W made further payments to 'P' from an account they held with another bank (which I'll refer to here as Bank H) on 11 April 2018 and 13 December 2018 for £10,000 and £20,000 respectively.

Mr B and Mr W say Santander provided no warnings to them before the payments were processed.

Mr B and Mr W received monthly statements and returns on their investment totalling £40,000 between May 2018 and May 2019. The returns were paid into their account with Bank H. Mr B and Mr W are claiming an outstanding loss in respect to their Santander complaint of £25,000.

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively. Mr B and Mr W have since tried to recover their lost funds by way of the liquidator, but this has been without success.

On 15 January 2024 Mr B and Mr W 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. They wanted Santander to refund them the £25,000.

Santander said it has done nothing wrong. It said it processed the payments in line with Mr B's instructions, via his online banking, and that warnings were provided when the payments were made. It said that 'P' was a legitimate company and it considered Mr B and

Mr W to have been the victims of a failed investment. Santander also said the Contingent Reimbursement Model (CRM code) didn't apply.

Mr B and Mr W referred their complaint to the Financial Ombudsman. In summary, they said Santander had failed to protect them, and if it had, their loss would've been prevented.

Mr B and Mr W also referred to previous Ombudsman decisions in support of their complaint.

One of our Investigators considered the complaint but didn't uphold it. Essentially, he accepted that Mr B and Mr W had been the victims of a scam, and that Santander should've flagged the payments as suspicious and questioned Mr B and Mr W about them. But he didn't think this would've prevented Mr B and Mr W's loss – mainly because of the involvement of their relative. Our Investigator also thought Santander had no reasonable prospect of recovering the lost funds.

Mr B and Mr W didn't agree and so the case has been passed to me to make a final decision.

In short, they said that the involvement of their relative was irrelevant – and all their dealings prior to the investment had been with 'B'. They also thought that a warning by Santander would've made them *'re-think'* their decision to invest and would've prevented their loss.

In terms of Santander's failure to question Mr B and Mr W about the payments, they said:

*'Whether this would have made a difference or not should not be a factor to dismiss the fact that the bank did fail in their duty towards their customer and failed to adhere to protocol'.*

### **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 B and Mr W were hoping for and so this will come as a disappointment. I'm really sorry to hear that they've been the victims of a scam, 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 B and Mr W'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've prevented Mr B and Mr W's loss.

I also want to be clear that whilst I'm aware Mr B and Mr W have also complained about the actions of Bank H, this decision focuses only on the actions of Santander.

Following a court hearing in July 2020, it's now accepted that Mr B and Mr W have likely been the victims of a scam. But the transactions they made in April 2018 were authorised payments, so Mr B and Mr W 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.

The question then arises whether Santander ought reasonably to have held such suspicions or concerns in relation to Mr B and Mr W'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 B and Mr W when they made the payments. Specifically, whether it should've 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've reasonably recovered the lost funds.

Arguably, there was justification here for an intervention by Santander prior to processing Mr B and Mr W's payment instructions. These were significantly larger than usual payments for Mr B and Mr W'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 B and Mr W 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 wouldn't have revealed the payments were part of a fraud or scam, then I couldn't 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've 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 B and Mr W'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 B and Mr W had told it to make. Mr B and Mr W 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 B and Mr W's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr B and Mr W (which there was not 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 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 'P', and the legitimacy of the investment, I must consider what Santander could reasonably have established during a proportionate enquiry to Mr B and Mr W about their payments back in April 2018. I cannot apply the benefit of hindsight to this finding.

Both 'H' and 'P' were genuine companies and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material Mr B and Mr W have provided about 'H' and 'P', 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 couldn't have been accessed by either Santander or Mr B and Mr W at the time the payments were made.

I think it's also likely Mr B and Mr W would've told Santander that they had documents from 'B' confirming the terms of the investment, as well as information about 'H's previous trading history, together with a loan agreement with 'P', all of which appeared entirely genuine. And that 'B' had provided Mr B and Mr W with a clear and detailed overview of the investment opportunity several months prior to them making the payments, which included an endorsement of 'H' as well as information about a capital protection guarantee scheme. This would've likely further reassured Mr B and Mr W that their money was protected.

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

I've thought next about how Mr B and Mr W found out about the investment. Mr B and Mr W have said that whilst the investment was first mentioned by a relative, their main dealings were with 'B'. 'B' appears to be an unregulated broker.

Had Santander asked Mr B and Mr W who'd advised them 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 B and Mr W were introduced to it weren't something that would necessarily have indicated 'H' or 'P' were fraudulent (or that the investment was a scam) at the time Mr B and Mr W asked Santander to make the payments.

Further to that, I've not seen any evidence to suggest Mr B and Mr W ever doubted the advice they were being given by 'B'.

They said that 'B' confirmed that they:

*'... would receive a return on their investment at a rate of 3% or 5% per month, subject to their attitude to risk. It was guaranteed that the investment included 100% capital protection, and that the funds would be held with an FCA-regulated liquidity provider'*

And that:

*'... 'B' advised [them] that the risk in respect of the investment were so low that they did not need to be concerned'.*

Mr B and Mr W also said they:

*'... proceeded with the investment based upon the successful receipt of returns received by their family members, and the information provided to them by [B]'.*

And that they:

*'... were informed by their [relative] that they had successfully received returns on their investment, alongside other investors, and ... were aware that their [relative] had already conducted checks via Companies House in relation to the director of the investment.'*

Mr B and Mr W also said that they:

*'... had no reason to doubt the legitimacy of these payments as they were remitted to a genuine company which was trading at the time, having been trading for over three years'.*

To secure the funds, Mr B and Mr W waited seven months before investing. They weren't therefore rushed or pressured and had plenty of time to make an informed decision based on all the available evidence.

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

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' or 'P' at that point in time. Neither do I think Mr B and Mr W could've uncovered such information at the time – they were 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' or 'P' being fraudulent. I don't think that a proportionate enquiry in April 2018 would've led to either Santander or Mr B and Mr W considering 'H' or 'P' 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 B and Mr W 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 B and Mr W contacted Santander. Furthermore, both 'H' and 'P' had gone into liquidation by this point.

Therefore, I can't say Santander had any reasonable prospect of recovering the funds in 2024 given the passing of time; and because 'H' and 'P' had gone into liquidation more than five years before.

I have a great deal of sympathy for Mr B and Mr W 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 B and Mr W to accept or reject my decision **before 9 January 2025**.

Anna Jackson  
**Ombudsman**