

## The complaint

Mr F complains that Santander UK Plc didn't do enough to protect him when he fell victim to an investment scam.

## What happened

In late 2017, Mr F was cold called by a merchant purporting to offer binary options investments. He understood this merchant was regulated and he could make a large sum investing with it, so he began sending funds from a number of his accounts. This case relates to the funds Mr F sent on his Santander credit card between December 2017 and February 2018.

Mr F believed he was dealing with the merchant for several more months after the above payments. In July 2018, the investment platform disappeared, and Mr F understood they had gone bankrupt. He believed all his funds were lost. It was in fact a scam investment and Mr F had never invested.

Mr F complained to Santander in May 2023 about being the victim of this investment scam. He did raise a complaint in 2018 about trying to recover his funds via chargeback or Section 75, and it was not upheld. But there was no discussion in the 2018 complaint about Mr F being a scam victim, at this time he understood the investment company had just gone bankrupt. Santander didn't uphold Mr F's 2023 complaint, so he came to our service.

Our investigator did uphold Mr F's complaint, but held him and Santander equally liable. Santander maintained it wasn't responsible for the loss as the payments weren't out of character. And Mr F maintained he wasn't liable as he didn't realise he was dealing with a scam merchant or know to do research.

I issued a provisional decision on this case in October 2024. My findings were as follows:

*I've considered longstanding regulatory expectations and requirements, and what I consider to be good industry practice for firms when processing payments. In line with this, Santander ought to have been on the look-out for the possibility of fraud and made additional checks before processing payments in some circumstances.*

*I have reviewed Mr F's account and the payments made because of this scam. Mr F made the initial credit card payments directly to the scammer in this case and it's clear from his statements who he is paying. Santander is aware that we consider it should have a watchlist which is updated regularly to include the names of merchants that appear on published warning lists – such as the Financial Conduct Authority's ('FCA') warning list and the International Organizations of Securities Commissions (IOSCO) website.*

*A concerning warning was published by the FCA on 4 July 2017 about the scam merchant Mr F paid. As this was over six months before the first payment was attempted, Santander's warning list should've included this merchant and the*

*payment shouldn't have been processed without a proportionate intervention by Santander.*

*Having thought about the circumstances of this scam, I think Santander could've prevented Mr F's loss had it appropriately intervened.*

*Considering the situation here, I think a human intervention was proportionate in the circumstances. Had Santander intervened in this way, by sharing its concerning knowledge about the merchant and appropriately questioning Mr F about the circumstances around why he was making this payment, I'm confident this would've prevented him making any further payments. He had only recently been introduced to this opportunity and hadn't done research on the merchant, so wasn't aware of the warning or the significance of this. And as he had little knowledge of this kind of investing, I don't think he would've gone ahead.*

*I've then considered whether Mr F's actions in this case were reasonable and whether he ought to share any responsibility for his losses here.*

*Having thought about the circumstances of this scam, I think Mr F also holds some responsibility for his losses here, so liability should be shared between the parties. I say this because, as above, Mr F hadn't appropriately researched the company he was investing with.*

*The FCA warning was easily accessible to Mr F and had he performed an online search for reviews of the scam firm, he would've seen this information. Mr F has said he didn't have any doubts and wouldn't have known how to check the scam firm even if he did. But I can't agree that not doing any research, such as an online search, is reasonable. Mr F parted with a large sum of money in a short space of time without knowing a lot about the company he was involved with or whether it was operating legitimately. I accept they told him they were regulated, but the company had cold called Mr F and he needed to take reasonable care with his funds and so verify this information. And some basic research should've highlighted to him that they weren't regulated, so were being dishonest, and he was likely about to be scammed.*

*Our service would normally consider whether any action Santander took to recover Mr F's funds was appropriate. However, I can see it did look into recovery for Mr F in late 2018 and he complained about Santander's response at that time. Mr F received a final response with a six-month deadline to come to our service in October 2018. So, as our investigator set out and hasn't been disputed, our service can't look into the recovery aspect, as this element is out of time under the rules we must apply.*

Santander accepted the provisional decision. Mr F, via his representative, disagreed with the deduction for contributory negligence. He explained he couldn't recall if he'd done research into the firm, but said that even if he had, he may not have found the FCA warning or understood what it meant. And he referenced a published decision from 2022 involving the same scam trader, where no deduction had been made. He also questioned the interest award on this case.

### **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.

Neither Santander nor Mr F provided any further comments in relation to my reasoning surrounding the FCA warning. So I see no reason to change my findings on this point. So my

decision is that Santander should have stopped the first payment Mr F made as it should've been aware it was going to a merchant with a FCA warning. It should've spoken to Mr F at this time, and I conclude this would've unravelled the scam.

Mr F does however dispute the deduction I have made for contributory negligence.

I've carefully considered his arguments for why he shouldn't be held as liable at all, or at least equally liable to a firm, considering their expertise and knowledge. I've also reviewed the published decision he shared with me. The role of our service is to decide cases on their individual merits. So while I accept there appear to be similarities between Mr F's situation and the case in the published decision, I need to review Mr F's situation and the information I hold.

Santander does have a duty to protect Mr F from fraud when there's an identifiable risk. But Mr F also has responsibility for his own funds, and this is why I do still consider he should be held responsible for what happened. While I accept Santander failed in its duty, I can't agree that this failure means Mr F should hold no responsibility at all.

I accept that doing an internet search may not be commonplace for all investments, but context is key here. In this case, Mr F was cold-called – so while he didn't know the merchant wasn't genuine, he also didn't know they were. He didn't know anything about them bar what they had told him. If Mr F had been introduced to the investment via a regulated broker or another trusted party, I may have reached a different outcome. But Mr F received unsolicited contact and then put a great deal of trust and money in the party that rung him.

Mr F can't recall if he did any research, but if he didn't, I consider this does amount to contributory negligence – as it isn't reasonable to simply rely on information given to you by an unknown third-party who cold-calls you. And if Mr F had done research, he should have found concerning information.

Due to the time passed, it's not possible to accurately see exactly what the research Mr F ought to have done (on his chosen search engine) would've shown. Features available on other search engines do show the FCA warning would've shown up at the time – and as they search in a similar way, I consider it's highly likely it would've displayed to him. This is also because this part of the FCA website is deliberately set up so that consumers can find and access this warning information. Mr F has said he may not have understood the warning even if he had seen it. But considering he's said the scammer told him they were regulated; I think an article stating they weren't, and which says to avoid dealing with them would've been enough of a red flag for him to end contact.

Mr F also got involved with this investment quite quickly. He made several payments on his credit card the same day to start this investment. And within a month of investing, he transferred a large sum through another bank. Considering this, I am satisfied he needed to have done more to be sure the opportunity was genuine. And there was information available, had he looked for it, that would've told him it wasn't.

I recognise that Mr F is an individual with vulnerabilities and Santander had access to more sophisticated fraud detection systems. But he didn't need a sophisticated system to verify the legitimacy of this merchant. I'm aware from his other case for the recovery scam that he was able to use the internet and carry out searches, so he could've done this and taken steps to understand the published information before investing. While the scam merchant did go to some lengths to appear legitimate, Mr F also did have information accessible to him to evidence this was not the case. So my decision remains to share liability equally between the parties.

Mr F has fallen victim to a sophisticated and cruel scam and I recognise the impact this has had on him. But in this case, I consider both parties had the opportunity to prevent the loss at an early stage, so my decision remains to share liability equally between the parties.

Following Mr F's response, I have reconsidered whether it would be fair to hold Santander liable for what happened with Mr F's other bank – as he hasn't received a full refund from them for the funds he sent.

I accept that if Santander had stopped the payments involved in this case it's likely that Mr F wouldn't have gone on to send funds to this first scam through this other bank. However, as I have explained to Mr F on another of his cases, I have to consider the legal chain of causation and – as with his recovery scam cases – I am satisfied it is broken in this case, this time by him moving banks for the payments. I do consider this an intervening act and means Santander isn't responsible for what happened with that bank. So I'm not directing Santander to refund any payments Mr F made elsewhere.

Mr F questioned the 8% simple interest in this case and the difference between this and a case where Mr F had made payments from both his bank account and on a credit card. As Mr F used a credit facility to make the payments here, he wouldn't automatically get 8% simple interest added – as this is awarded for the time someone has been without the use of their own funds. However, as I set out in the provisional decision, in calculating the redress Santander will need to restructure Mr F's account – this is not something our service does, as we don't carry out calculations. But when it does this, if Mr F had overpaid towards his credit card (which I think is likely in this case as Mr F cleared his balance in full each month), then he will receive 8% simple interest on the amount his credit card would've then been in credit.

### **Putting things right**

Santander UK Plc needs to:

- Refund Mr F all the payments he made to the original scam from December 2017 to February 2018, minus any credits received from the scam, that haven't already been accounted for. Santander should make a 50% deduction on this amount for Mr F's contributory negligence.
- It should also re-work his credit card statement from that time and refund any credit card interest applied in association with the refunded payments.
- If this re-work creates a credit balance, Santander should then pay 8% simple interest on this credit amount from the date of loss to the date it refunds the money

### **My final decision**

For the reasons set out above, I intend to partially uphold Mr F's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 4 December 2024.

Amy Osborne  
**Ombudsman**