

## The complaint

Ms D complains that Santander UK Plc didn't protect her from an investment scam.

Ms D is being supported in making her complaint by a representative. But for ease, I'll only refer to Ms D in this decision.

## What happened

Ms D says that Mr R – who she says was an '*independent advisor*' - introduced her to an investment with a company (which I'll refer to here as 'H') in relation to Forex trading. Mr R appears to represent a company which I'll refer to here as 'A'.

Ms D says 'H' promised a refund of the capital in 12 months, plus paying 5% interest per month.

Another company (which I'll refer to here as 'P') facilitated the transfer of the funds Ms D was investing in 'H'. Ms D entered into a loan agreement with 'P' on 30 April 2018 for the sum of £30,000.

Ms D made the following payment by way of telephone banking. Santander said the payment was '*detected and cleared*'. Ms D spoke to Santander about setting up the new payee with 'P' and was provided a general scam warning.

Date	Amount
4/6/2018	£30,000

Between July and December 2018 Ms D received six monthly returns on the investment totalling £9,000. But since then, she says she's been unable to recover any funds from 'P' or 'H'. Ms D's total loss is therefore £21,000.

In November 2018, Ms D made a further payment towards the investment in 'H' of £35,000 from an account with another bank (Bank B).

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively.

On 16 November 2023 Ms D made a complaint to Santander. In short, she said she'd been the victim of a scam, and that Santander hadn't done enough to protect her. Ms D therefore held Santander responsible for her loss. She wanted Santander to refund her the £21,000 together with 8% interest and £1,000 for the distress and inconvenience caused.

In short, Santander said it would not reimburse the funds and that the Contingent Reimbursement Model (CRM code) didn't apply. Santander added that it had no concerns about the legitimacy of 'P'.

Ms D referred her complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, he said Santander couldn't provide Ms D with investment advice. And given there was no adverse information about 'P' or 'H' available at the time of the £30,000 payment, he didn't think

further questioning by Santander would've given it or Ms D any obvious cause for concern they weren't legitimate. Our Investigator also found there was no reasonable prospect of Santander recovering the lost funds.

Ms D didn't agree. She said Santander should've applied the banking protocol given the size of the payment; and that further questioning by Santander would've indicated she was at risk of being scammed.

Ms D said Santander should've advised her about the risks associated with unregulated forex investment schemes, and that if it had, she'd have looked more closely into 'H' before proceeding with the payment as she wouldn't have wanted to take such a high risk.

Ms D said she would've taken any advice or warnings from Santander, her trusted bank, seriously and that 'H's' *'false pretences'* would've been uncovered, and her loss prevented.

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 Ms D was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation she's found herself in, and I can understand why she'd want to do all she can to recover the money she lost. But I need to decide whether Santander can fairly and reasonably be held responsible for Ms D'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 Ms D's loss.

I also want to be clear that whilst I'm aware Ms D has additionally complained about the actions of Bank B, this decision focuses only on the actions of Santander.

Following a court hearing in July 2020, it's now accepted that Ms D has likely been the victim of a scam. But I accept the £30,000 transaction she made towards the investment was an authorised payment. So, Ms D 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 Ms D's £30,000 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 Ms D when she made the payment over the phone. 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.

Arguably, there was justification here for an intervention by Santander prior to processing Ms D's payment instruction on 4 June 2018. This payment was significantly larger than usual payments for Ms D's account in the previous six months and was being made to a new 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 find it fair and reasonable that Santander should refund Ms D requires more than a finding that Santander ought to have intervened in the £30,000 payment.

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 have 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 Ms D's instruction without delay. It wasn't to concern itself with the wisdom or risks of her 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 Ms D had told it to make. Ms D 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 Ms D's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Ms D (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 this 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 'P', and the legitimacy of the investment, I must consider what Santander could reasonably have established during a proportionate enquiry to Ms D about her payment back in June 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 Ms D has 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 Ms D at the time the £30,000 payment was made.

I think it's also likely Ms D would've told Santander that she had documents from 'H' and 'P' confirming the terms of the investment, together with the loan agreement with 'P', which all appeared entirely genuine. On that basis I don't think it would've been proportionate for Santander to have applied the Banking Protocol, as Ms D believes it should've done.

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 £30,000 payment was made by Ms D.

I've thought next about how Ms D found out about the investment. Ms D has said the investment was introduced by Mr R who, seems to work for 'A'. 'A' is an unregulated broker, which is clearly explained on its website.

Had Santander asked Ms D who'd advised her about the investment, then the involvement of Mr R (and possibly 'A') 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 Ms D was 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 Ms D asked Santander to make the payment.

Further to that, I've not seen anything to suggest that Ms D didn't fully believe what Mr R was telling her. And Ms D has herself admitted that she trusted Mr R and that she:

*'... didn't feel like he wasn't being genuine and didn't have a reason to query it'.*

Ms D has also said that Mr R provided information on other clients' returns on their investments with 'H', which reinforced her trust in him.

Ms D has also provided an email from Mr R where he attaches several documents from 'H' and 'P' including information about its past and projected trading results, capital protection guarantee, as well as pictures of 'H's' offices and its traders. The documentation also outlines 'H's' *'Risk Management Strategy'* and confirms that:

*'[H] trade in an extremely cautious manner and follow a strict 5 stage risk management process to make sure client funds are protected to the highest possible level'.*

So, even if Ms D didn't have an appetite for risk, assurances were provided that any risks investing with 'H' could be minimised.

Furthermore, when speaking with Santander, Ms D asked that 'P' be set up as a regular payee – as she confirmed she would be making further payments to 'P' (as she later did from her account with Bank B). And she wanted to know what the daily limit was to make online faster payments. Mrs D was also aware that 'P's' account was held with Santander, which appears to have further reassured her (and Santander) that 'P' was legitimate.

Given all this I don't think, on balance, that any advice or warning from Santander about Mr R or 'A' would've likely resonated with Ms D or given her any cause for concern. And any concerns that might've been raised about 'H' or 'P' would've likely, in my opinion, have been allayed by Mr R.

All things considered; I don't think it would've been readily apparent in June 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 Ms D could've uncovered such information at the time – she wasn'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 June 2018 would've led to either Santander or Ms D considering 'H' or 'P' 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 instruction, or for not preventing Ms D from making her 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. But more than five years had passed by the time Ms D 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 2023 given the passing of time; and because 'H' and 'P' had gone into liquidation more than three years before.

I have a great deal of sympathy for Ms D and the loss she's suffered. But it would only be fair for me to direct Santander to refund her 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 Ms D to accept or reject my decision **before 5 March 2025**.

Anna Jackson  
**Ombudsman**