

The complaint

Mr E complains that Santander UK Plc won't refund money he lost when he was a victim of an investment scam.

Mr E is represented by a firm I'll refer to as 'R'.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

Mr E decided to invest £40,000 with a family friend – whom I'll refer to as 'RK' – that he'd known for a long time (having been a friend of his late father). RK worked for an investment firm that I'll refer to as 'AG' that was based abroad. Before investing, Mr E received a joint venture agreement (contract) setting out the terms of the investment – which included a target of paying returns of 10% every three months over a 24-month period.

Mr E made the following payments from his Santander account (with a £25 fee applicable to each transaction):

Date	Transaction type	Amount
7 August 2023	International payment	£1,000
8 August 2023	International payment	£31,173.37
9 August 2023	International payment	£6,362.25
9 August 2023	International payment	£1,499.38
	Total	£40,035 (+£100 in fees)

The first payment was made by Mr E as a test transaction to ensure the funds were safely received. He then sent the rest of the investment sum across three transactions. This was because, in respect of the second and third payments, the amount sent was in the foreign currency denomination (and not the sterling equivalent).

Mr E received a credit from AG of £1,742.41 on 10 October 2023. This puts Mr E's claimed loss (included fees) at £38,392.59.

Mr E has explained that he realised he'd been scammed when the expected returns had stopped, and, despite receiving explanations and reassurances from RK he would receive it, no further funds were received. Contact then ceased.

R complained, on Mr E's behalf, to Santander on 3 July 2024. They said Santander failed to

identify out of character payments that were indicative of fraud. And had they made an appropriate intervention, the fraud would've been prevented. Although Santander did contact Mr E about the £31,173.37 payment, they only asked routine banking security questions to authorise his identify. Whereas if Santander had asked probing questions surrounding the nature of the investment, they would've understood the associated red flags and uncovered the scam. R also explained that Mr E was vulnerable at the time of the scam due to his father's recent death, and so his decision making was impacted as a result. To resolve the complaint, Santander should refund Mr E and pay 8% simple interest.

Santander didn't uphold the complaint. They said the correct level of security was used to complete the transactions, and two of the payments (£31,173.37 and £6,362.25) were referred for additional checks. This involved Mr E speaking with their security team - in which he was provided relevant scam warnings, he confirmed the payments were genuine and he wished to proceed. The Contingent Reimbursement Model (CRM) code doesn't apply to these transactions as they were international payments. They have contacted the beneficiary bank to try and recover the funds, but they hadn't yet received a response.

The complaint was referred to the Financial Ombudsman. Our Investigator didn't think Santander had to do anything further. In short, he said:

- Santander did contact Mr E before processing the £31,173.37 payment. In this call Mr E said he knew the individual (RK) that was investing on his behalf, he'd initiated contact regarding investing, and he'd received an investment contract.
- RK was a trusted family friend that Mr E had known for a long time. And Mr E confirmed to Santander that he'd carried out his due diligence on the investment opportunity.
- Although R has said there was an entry on Companies House showing AG to have been dissolved before Mr E made the payments, this was a different entity that had a similar name.
- He wasn't persuaded Mr E showed any signs of vulnerability in his calls with Santander.
- The website for AG indicates they are still operating, and they appear to be registered with their country's security and exchanges commission and regulatory body.
- The information Mr E provided Santander sounded plausible and didn't show signs of a scam. Although Santander could've probed further, he thought Mr E would've still made the payment as he was aware of the nature of the investment opportunity. That being RK was investing on his behalf and that the returns weren't guaranteed.
- Mr E explained to Santander that RK was treating him more favourably than standard clients (providing a bespoke service) due to their personal friendship. This wouldn't have caused alarm with Santander in respect of contract variations.
- Santander acted fairly in their recovery attempts.

R disagreed with our Investigator. In short, they said:

- The FCA's Consumer Duty requires banks to be proactive when delivering good customer outcomes. They believe the failure of Santander to effectively intervene demonstrates a failure to prevent foreseeable harm to Mr E.
- Santander failed to probe Mr E. For example:
 - They didn't ask what due diligence he'd undertaken.
 - They didn't ask the name of the investment firm or advise him to check the International Securities & Commissions (IOSCO) register. Nor did they advise Mr E to check that RK worked for AG.
 - They should've educated Mr E on what type of due diligence checks he could carry out – particularly due to the risks involved with sending a significant amount

of money internationally.

- Mr E told Santander that the contract was changed – this is not normal as investment contracts are not normally personalised.
- The scammer's email address had a UK based domain, which made no sense given the firm was based abroad.
- The returns of 10% per month were unrealistic.
- Mr E demonstrated he didn't have enough knowledge about his investment as he couldn't explain how the money would be invested in any detail. Nor could he explain his access or visibility to the funds once they left his account (such as if he would have an app or be able to see an overview of his investment). Santander should've asked for more clarity as to the nature of the investment.
- Santander issued no warnings or education. And they took Mr E's answers at face value – this was not proportionate to the risk presented by the £31,173.37 payment.
- Santander should've questioned Mr E in branch and invoked Banking Protocol.
- Santander ignored clear red flags. And banks should be aware that a person's personal connection with the 'broker' shouldn't prevent an effective intervention.
- Mr E should be refunded given Santander's failure to prevent foreseeable harm.

The matter has therefore been passed to me to decide.

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.

I'm sorry Mr E has lost a significant amount of money, and I don't underestimate the impact this had. But I must consider if Santander is responsible for this loss. I know this won't be the outcome Mr E is hoping for, but for similar reasons as our Investigator, I don't think they are. So, I don't think Santander has acted unfairly by not refunding the payments. I'll explain why.

Before I do, I want to reassure Mr E that I've considered everything R has submitted on his behalf. And so, while I've summarised this complaint in far less detail than what has been provided, I want to stress that no discourtesy is intended by this. If there is a submission I've not addressed; it isn't because I have ignored the point. It's simply because my findings focus on what I consider to be the central issue in this complaint – that being whether Santander is responsible for the loss.

In broad terms, the starting position in law is that a bank is expected to process payments that their customer authorises them to make. It isn't disputed that Mr E knowingly made the payments from his account and so, I'm satisfied he authorised them. Therefore, under the Payment Services Regulations 2017 and the terms of his account, Santander are expected to process Mr E's payments, and he is presumed liable for the loss in the first instance.

However, taking into account the regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for Santander to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud.

Given its low value, I wouldn't reasonably have expected Santander to have carried out additional checks before processing the first payment. Santander did however carry out additional checks before processing the next two payments. Given their higher value and as they were international payments (which carries a known risk), I think this was reasonable in the circumstances. I've therefore considered whether the additional checks Santander carried out were proportionate to the risk the payments presented. And if they weren't, whether this was the cause of Mr E's loss.

Having listened carefully to the two calls, I consider Mr E was open and honest about the purpose of the payments. He explained that he was making them for investment purposes with a family friend that he'd known for a long time. And that he had initiated contact, so he wasn't, for example, cold called. This would've naturally been reassuring to Santander – as this isn't the typical circumstances leading to an investment scam. Nevertheless, given the amount Mr E was sending (over £30,000 on the first call) and as it was going internationally for investment purposes, it would've been reasonable for Santander to have asked further questions to satisfy themselves Mr E wasn't at risk of financial harm from fraud.

Mr E did explain that he had received a contract, with a 'preview' copy initially provided before the 'actual' contract being sent once the terms had been agreed. I note that R argues this should've been of concern to Santander as it's not normal for contracts to be changed. Here though, Mr E said the first was a 'preview' which suggests that it was sent across to him as a guide of what could be arranged. I don't think this is unusual, nor I do think it's uncommon for investors to obtain alterations to an investment contract. This is because terms – such as the amount to be invested, the length of the agreement or commission payable – can, for example, be amended before being finalised. So, I don't think Santander would've had reason to suspect Mr E was falling victim to a scam because of it.

Although Mr E confirmed to Santander that he had carried out due diligence, Santander didn't question him on what this involved. I agree with R that it would've been reasonable to have expected Santander to have probed Mr E further on this. For example, they could've asked him what checks he'd carried out and whether this included checking whether AG was authorised by their country's regulator or if he'd checked the IOSCO register. They could've also asked what returns Mr E was expecting to receive and if he'd been promised anything 'guaranteed' (as this can be an indicator of a scam). From what I understand, Mr E hadn't carried out additional checks before proceeding – instead, he relied upon the contract he'd been provided and assurances from RK whom he trusted given he was a longstanding family friend. I therefore think Mr E would've likely explained this to Santander, and that he was expecting returns of 10% per quarter.

Although reassured that Mr E was investing with a person he and his family had known for a long time, Santander arguably should've advised Mr E to carry out further checks on AG before going ahead with the payments. And highlighted the key features of investment scams and steps he could take to protect himself. But even if Santander had done this, I'm not persuaded this would've uncovered the scam or prevented Mr E's losses. This is because, from my own historical internet search, there doesn't appear to be information that was available online indicating AG as a potential scam firm at the time – such as being listed on the IOSCO register. Instead, AG's website appears to suggest that they're still operating as of today and remain registered by their country's regulatory body and security and exchanges commission.

Because of this, I'm not convinced that any further checks would've given either Santander or Mr E enough reason to consider that he was making the payments as part of a scam. Nor do I consider the expected returns, which were clearly highlighted as not being guaranteed in the contract, were so unrealistic whereby Santander would've had enough reason to consider it wasn't legitimate.

I'm aware that R has also highlighted other concerns such as RK's email domain including 'UK'. And that there being other indications of AG being a scam due to Mr E's lack of understanding about the investment, and as he seemingly wouldn't have had access or be able to view his funds once invested. While I accept that Mr E may not have conveyed to Santander that he fully understood everything regarding the investment, I don't think this is particularly uncommon for inexperienced investors. And while many investments do allow customers to access their account online to monitor performance, this is not always

exclusively the case – as some investments are, for example, fixed returns whereby this isn't necessary. Here however, the agreement refers to it as a 'joint venture' whereby, essentially, RK was investing the funds on Mr E's behalf with the aim of providing 10% returns every three months. So, I don't think the fact Mr E didn't have, for example, access to an online portal was enough reason for Santander to think the investment opportunity wasn't legitimate either. Nor do I think it is unusual for a person, residing in the UK but who works for firm based abroad, to have UK in their email domain name. So, even if Santander had become aware of this (which I think is unlikely), I similarly don't think it would've indicated to them that the investment opportunity wasn't potentially legitimate.

I've also considered R's reference to Mr E being vulnerable at the time of the scam due to his father's recent death, which they say impacted his decision making. While I'm naturally sympathetic to Mr E's loss, having listened to the calls he had with Santander, I'm not persuaded that Mr E demonstrated any clear signs of vulnerability. He spoke clearly and confidently throughout, and he didn't give any indications that he was potentially being manipulated or coerced by a third party. But rather, he seemed convinced that he was making the payments as a part of a legitimate investment opportunity with a trusted longtime family friend.

Having given this carefully thought, while I think Santander could've done more as part of their fraud prevented checks, I'm not persuaded they are responsible for the loss Mr E suffered. Ultimately, I don't think there would've been enough reason for Santander to have considered Mr E was making the payments for anything other than legitimate investment purposes. And because of this, I don't think any referral to branch for further questioning was required or that it would've uncovered the scam. Nor do I do consider it would've been appropriate for Banking Protocol to have been invoked in these circumstances.

On a final note, I've considered whether, on being alerted to the scam, Santander could reasonably have done more to recover Mr E's losses, but I don't think they could. The only course of action available was to contact the beneficiary bank, which they did. But unfortunately, the likelihood of recovery was low due to the transactions being international payments and because of the time that had passed since they were made.

I appreciate Mr E will be disappointed by this outcome. But it would only be fair for me to direct Santander to refund his loss if I thought they were responsible – and I'm not persuaded that this was the case. For the above reasons, I think Santander have acted fairly and so I'm not going to tell them 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 E to accept or reject my decision before 26 August 2025.

Daniel O'Dell
Ombudsman