

## **The complaint**

Mr J is unhappy that Santander UK Plc will not refund the money he lost as the result of an authorised push payment (APP) scam.

Mr J has brought his complaint through a representative, for ease of reading I will refer solely to Mr J in this decision.

## **What happened**

Both parties are familiar with the details of the scam so I will provide only a summary here. On 25 June 2018 Mr J visited one of the bank's branches and made a faster payment of £30,000 to firm H for a forex investment. He had been introduced to the opportunity by friends of his late mother who were brokers. He largely funded the investment from his recent inheritance. He understood he would receive a 5% monthly return over two years. When the returns stopped after two months Mr J realised he had been scammed.

Mr J says Santander did not protect him or his money as it ought to have; it should have asked him questions about the payment given its value.

Santander rejected Mr J's claim for a refund and said it seemed to be a dispute between Mr J and firm H. When he complained, it accepted Mr J had been the victim of a scam, but said the correct level of security was used to process the transaction.

Our investigator did not uphold Mr J's complaint. He said Santander ought to have intervened but he didn't think a proportionate intervention would have prevented Mr J's loss.

Mr J disagreed with this assessment and asked for an ombudsman's review. In summary, he said banks are more aware of scams and what they entail. Santander should have been able to provide more information. There were published articles warning people about the characteristics of forex trading scams. With the right questions Santander would have become aware that Mr J was inexperienced. If it had provided a warning he would have taken this seriously. He was not in the position to be able to lose that amount of money.

I reached the same conclusion as the investigator, but some of my findings differed so I issued a provisional decision. An extract follows and forms part of this final decision. I asked for any comments or new information by 1 January 2025.

### *Extract from my provisional decision*

*When Santander reviewed Mr J's refund claim it concluded this was a civil dispute but after he complained it recognised Mr J had been the victim of a scam. I am satisfied this was a scam based on a court hearing which took place on 31 July 2020. The judge concluded this was a ponzi scheme whereby funds from new investors were used to pay returns to existing investors.*

*However, there's no dispute that Mr J made and authorised the payment. Mr J knew who he was paying, and the reason why. At the stage he was making this payment, he believed*

*he was investing through a legitimate company. I don't dispute Mr J was scammed and he wasn't making the payment for the reason he thought he was, but I remain satisfied the transaction was authorised under the Payment Services Regulations 2017.*

*It's also accepted that Santander has an obligation to follow Mr J's instructions. So in the first instance Mr J is presumed liable for his loss. But there are other factors that must be considered.*

*To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, as the payment pre-dates its introduction, the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.*

*This means I think that Santander should have:*

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.*
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.*
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some possibility of financial harm.*

*In this case I don't think Santander ought to be held liable for the transaction. I'll explain why.*

*The transaction was to a new payee and high-value. It was out of character for Mr J's account. And so Santander should have contacted Mr J to ask for some detail about the payment before processing it.*

*This means I need to decide if an appropriate intervention by Santander would have made a difference to Mr J's decision to send the payment. On balance I don't think it would. I say this based on the questions Santander should have asked given the features of investment scams at the time – but taking into account that it had no duty to give investment advice.*

*At this time investment scams were often characterised by rates of return that were too good to be true and by receiving the opportunity to invest via a cold call or an unsolicited offer, with significant pressure applied to 'act now'. So I would have expected Santander to ask questions that probed these areas.*

*This 'investment' had none of these characteristics. Mr J says he selected this investment opportunity as friends of his mother, who were brokers, had a good relationship with the owners of firm H. He trusted them. Unfortunately he no longer has any of his investment-related email correspondence with the brokers, only personal correspondence relating to family events. He recalls he was told he would receive a monthly rate of return of 5% over 24 months.*

*It doesn't seem that the brokerage was regulated, contrary to the investigator's conclusion. However this doesn't change my finding for the reasons set out above. Mr J trusted his mother's friends - they had investment experience and he had no knowledge of FCA regulation.*

*There is no record of any published warnings or negative reviews about firm H in June 2018.*

*It wasn't until later in 2018 that it stopped making payments to its clients prior to liquidation in 2019. So it seems at the time of the event there would have been no public information that Santander ought to have been aware of and reacted to. Or indeed that Mr J would have come across had Santander suggested he first complete more checks.*

*I am aware the FCA published a warning about Forex trading scams in August 2017. This warned of individuals being targeted by firms after they had searched for investments online through search engines like Google and Bing, and then being promised very high returns. So I can't find that Santander would, or ought to have, connected that risk with this scam had it questioned Mr J.*

*In the round, I am satisfied that a proportionate intervention from Santander would not have prevented Mr J's loss given the characteristics of this investment scam.*

*I have then thought about whether Santander did what this service would expect to recover the funds once Mr J made a claim in 2023. Given the length of time that had passed and more crucially the fact firm H had entered liquidation in 2019 I'm satisfied that recovery from the receiving bank was a not a viable option.*

*This means I am not instructing Santander to refund any money to Mr J. This is a difficult decision to make, I'm sorry Mr J lost a considerable amount of money which was very distressing for him. I can understand why he would like to be compensated for his loss. And I do accept Mr J has fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find Santander can be held liable in the circumstances of this case.*

Santander did not respond to my provisional decision. Mr J disagreed with it saying, in summary, he believes Santander had frozen the account of another company involved in the same scam in June/July 2018 so it must have had concerns around the time he invested. So 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. As the investment was unregulated, he would have trusted the bank's warning and likely changed his mind if it had told him about some more secure investments through the bank. The payment was out of character for his account and Santander should have been more diligent. He sent in letters from the other company that he feels support his position.

### **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 have thought carefully about Mr J's response to my provisional decision. But I find that the points raised are either not relevant to this case, or have already been addressed in the provisional decision. I'll explain further.

I've made the finding that Santander ought to have intervened before processing the payment so I agree with Mr J's point that it was a clear deviation from his typical activity. Where I still disagree however is with his view that a proportionate intervention would have prevented the scam, or indeed that Santander had information that means it should have stopped the payment.

Mr J has put forward an assertion about the bank account of another company involved in the same scam. But that company was not the beneficiary of his payment so I do not find this allegation to be relevant in this case. Given what was known publicly at that time about

the recipient of his payment - firm H, I do not find there was reason for Santander to refuse to process the payment. In addition, the assertion Mr J makes relates to the role of Santander as a receiving bank which is not the subject of his complaint. So I cannot comment further on the additional evidence he sent in.

Mr J also said that if Santander had put forward other more secure investment opportunities he would have likely listened and changed his mind about investing in firm H. But when executing authorised payments, Santander is under no obligation to give investment advice.

It follows for the reasons set out here, and above, I do not find Santander can be held liable for Mr J's losses.

### **My final decision**

I am not upholding Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 4 February 2025.

Rebecca Connelley  
**Ombudsman**