

## **The complaint**

Mr R is unhappy Santander UK Plc won't reimburse him for the money he lost when he fell victim to a scam.

Mr R is represented in this complaint by a solicitor, for simplicity I will refer to Mr R throughout this decision, even when referencing what his representatives have said on his behalf.

## **What happened**

In late 2017 Mr R was looking for pension advice. He spoke to his mortgage adviser and was put in touch with an Independent Financial Adviser, and then with further advisers. Ultimately Mr R was advised to invest in an unregulated Forex investment scheme – which I'll call H.

Over around a year Mr R invested £110,000 into H, these payments were made via two different introducers – P and M – who earned commission on Mr R's investments. Mr R believed he would receive a return of his capital within 12 months plus interest of 5% per month.

Mr R received a total of £57,000 back from the investment, but H began to fall behind on payments to investors, and went into voluntary liquidation in June 2019. Mr R was then unable to recover his remaining funds from H, P or M.

Mr R contacted Santander in 2024 to tell it what had happened, but Santander said it was unable to provide Mr R with a final response to his concerns given the complexity of the situation.

Mr R was unhappy with Santander's response and so he referred his complaint to our service.

One of our Investigators looked into what had happened. They felt that the first payment Mr R had made to the scam was out of our jurisdiction because it had been made to late. They also felt that, ultimately, while they agreed that Santander could have done more to intervene in the payments Mr R was making, it was unlikely that any further intervention from Santander would have identified H as a scam or stopped Mr R from making the payments. So, they did not consider that Santander needed to refund any of Mr R's loss.

Mr R was unhappy with the Investigator's findings, he does not think it is fair to say the first scam payment is out of our jurisdiction. He also considers that reasonable intervention from Santander would have raised red flags about H and prevented his loss.

As no agreement could be reached, this case has been passed to me for a 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 reached the same conclusion as our Investigator, and for the same reasons.

*What payments can we consider?*

The rules I must apply say that, where a business doesn't agree, I can't look at a complaint made more than six years after what's being complained about happened, or if later, more than three years after the complainant (in this case, Mr R) knew, or should reasonably have known, that they had reason to complain. This is set out in Dispute Resolution rule 2.8.2R which can be found online.

Mr R has complained about payments going back to 27 December 2017, to an investment. So, Mr R had, at least, six years from when each payment was made – so, for the first payment in question here, by 27 December 2023 at the latest – in order to complain. Mr R didn't complain until February 2024. So, he complained more than six years after the first payment he is complaining about.

But DISP 2.8.2R (2)(b) can potentially provide a consumer with longer than six years to complain, as long as they complained within three years of when they were aware, or they ought reasonably to have been aware, they had cause to. So, I've considered whether DISP 2.8.2R (2)(b) provides Mr R with longer to complain here.

Mr R was receiving payments from H up until April 2019, and H went into liquidation in June 2019. Mr R says that he was still receiving assurances from H at that time that the scheme was legitimate, but I do consider that there was enough going on by the end of June 2019 that Mr R would have known he likely had cause to complain.

As this is the case, I think Mr R therefore had until around June 2022 to raise a complaint under the three-year rule. Mr R did not complain until February 2024 – over 18 months later – and with this in mind, I think that the complaint about the first payment was made too late.

But even so – for the same reasons as I will set out below for the remaining scam payments – even if we did consider this first payment to be within our jurisdiction, I cannot see that there are any grounds on which we would say it should be refunded to Mr R.

*Could Santander have prevented Mr R's loss?*

I'm satisfied Mr R did authorise the payments that are in dispute here. So, as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr R is responsible for them. That remains the case even though Mr R was the unfortunate victim of a scam.

Because of this, Mr R is not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr R, or whether it should have done more than it did.

And I'm satisfied that the values of the payments Mr R was making – particularly the payments that were £30,000 and over – were high enough that they should have caused Santander some concern. So, I think Santander should have contacted Mr R directly to ask him some questions before allowing these payments to go through.

However, I'm also satisfied that, even if it had done so, it's unlikely that the scam would have been uncovered. I say this because there are various features of the particular scam that Mr R fell victim to that mean it would not have flagged as suspicious to Santander. Specifically:

- Mr R was investing on the advice of several apparently legitimate financial advisers and financial service firms - variously registered on Companies House and on the FCA register - this is not what one would expect to see in a standard investment scam.
- Mr R had met these individuals face-to-face and the initial introduction was via Mr R's mortgage broker – an established relationship – who directed him to an adviser they had known for many years.
- H and P were both registered on Companies House, and had apparently been operating for some time when Mr R began to invest.
- There were no clear warnings about scams associated with the relevant parties at the time.
- While the promised returns were relatively high, as the scam progressed Mr R did receive returns in line with his expectations, up until April 2019.

With all of this in mind, I'm satisfied that what Mr R knew about the investment scheme at the time, and what he would have told Santander, would have meant that any intervention would be very unlikely to have stopped him from investing further. I don't think any of what Mr R would likely have explained at the time, or any of the publicly available information about H, P and M, would have given Santander any grounds to suspect Mr R was at risk of financial harm. In other words, I don't think Santander could have reasonably prevented Mr R's loss.

I also don't think that Santander could have done anything to recover these funds once Mr R reported the scam. I say this because Mr R did not report his concerns to Santander until over five years after his last payment to the scam. Given that we are now aware that H was essentially operating as a Ponzi scheme, I cannot see how we can reasonably say that there was any prospect of Santander recovering Mr R's funds by that stage.

I don't doubt that Mr R has been the victim of a cruel scam here, and I know that he has lost a significant amount of money. But I've not seen anything to make me think it would be reasonable to hold Santander liable for his loss.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 July 2025.

Sophie Mitchell

**Ombudsman**