

The complaint

Mrs B complains that Santander UK Plc didn't protect her from an investment scam.

Mrs B is being supported in making her complaint by her son (Mr B). But for ease, I'll mainly refer to Mrs B in this decision.

What happened

In October 2017 Mrs B says Mr B met up with a close family friend whom they'd known for over 20 years. This friend told Mr B that her husband (who I'll refer to here as 'M'), was a Financial Conduct Authority (FCA) regulated broker who was starting up a wealth management company (which I'll refer to here as 'A'). 'M' had previously worked for another FCA regulated company (which I'll refer to here as 'T'). Mrs B said their friend suggested that she might want to look to invest some money.

A meeting took place between Mrs B and 'M', along with several other family members (including Mr B). 'M' presented them with four different investment opportunities – one of which was investing with a company (which I'll refer to here as 'H') in relation to forex trading.

Mrs B 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 to 'H'.

Mrs B says that 'M' kept in regular contact with her – assuring her of his FCA regulated status and investment experience. 'M' said:

'I have been a stock broker/trader for the last 20 years now and over that time have developed excellent relationships with suitable partners that deliver. I am FCA regulated under ['T'] and ['A'] will continue to be so for the foreseeable future'.

Mrs B said 'M' also promised capital protection of the investments he offered and said he had carried out his own checks into 'H's performance, as well having evidence of returns from other investors. 'M' was also able to provide marketing material from 'H' explaining how the investment worked.

Mrs B has said 'M' told her:

'that as an FCA approved advisor ... he was authorised to advise upon and recommend these schemes'.

Mrs B said that she carried out checks to confirm that 'M' was registered with the FCA. She said this gave her reassurance on top of the fact 'M' was a close family friend. Mrs B said:

'It was only at this point, some 4 months later, that we agreed to send money after seeking regulated advice from the then trusted FCA ... regulated broker ..., who advised and recommended the investment scheme'.

Mrs B made the following payment by way of telephone banking.

Date	Amount
8/4/2018	£50,000

Mrs B recalls that Santander asked her about the payment purpose, and that she said it was for an investment on the advice of an FCA regulated person, but she doesn't remember Santander asking any questions about the payment or providing her with any warnings. Santander has been unable to provide any evidence of what was discussed with Mrs B when the payment was made. But provided a script which it said would've been read out to her given the payment size.

Mrs B received returns on the investment totalling £27,500. But since then, she says she's been unable to recover any funds from 'P' or 'H'.

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively. Mrs B has tried to recover her funds through the liquidation process, but this wasn't successful. She also started legal action against 'M', but this stopped due to rising expense.

Mrs B raised a scam claim with Santander in November 2023. It declined the claim, essentially saying this was a civil dispute, not a scam. And that it had no concerns over the beneficiary account ('P').

Mrs B 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. Mrs B therefore held Santander responsible for her loss. She wanted her funds returned, together with 8% interest.

Santander didn't reply and so Mrs B referred her complaint to the Financial Ombudsman. She remained of the opinion that Santander hadn't done enough to protect her. Mrs B said Santander shouldn't have allowed her to make the £50,000 payment.

One of our Investigators considered the complaint but didn't uphold it. In summary, she said Santander should've questioned Mrs B about the £50,000 payment. But given there was no adverse information about 'P' or 'H' available at that time, she didn't think further questioning by Santander would've given it or Mrs B any obvious cause for concern.

She also didn't think any suggestion by Santander that Mrs B should carry out further checks into 'M' would've made a difference given Mrs B had carried out checks and was satisfied 'M' was FCA regulated. And that the personal relationship between Mrs B and 'M' and the trust she had in him would've likely further reassured her that the investment in 'H' was legitimate, even if Santander had warned her.

Finally, our Investigator didn't think there was any reasonable prospect of Santander being able to recover the lost funds.

Mrs B didn't agree and in summary, made the following points:

- Her complaint is specifically that Santander failed to ask her relevant questions about her payment and give effective warnings about the scam, *not* that she expected Santander to reasonably prevent the loss.
- Santander failed to fulfil its duties and carry out due diligence – and by doing so failed to reasonably safeguard her from the risk of financial harm.
- The £50,000 payment carried a heightened risk of financial harm and as it was made over the phone, Santander should've invoked the banking protocol.
- The documentation provided by 'M' about 'H' didn't look genuine – which was evident by the fact it suggested her funds weren't at risk.
- Another bank having frozen 'P's account *'for suspicious activity'* in January 2018 was a significant factor that should've concerned Santander - who also froze 'P's account in July 2018.
- Santander didn't do enough to help recover the lost funds.

- If Santander had fulfilled its duties and carried out due diligence by asking her suitably probing questions, she would've had the opportunity to explain what the payment was for and the high rate of returns she was to receive.
- There was information in the public domain about the risks associated with unregulated forex investments and Santander should've been aware of this and warned her. She would've then investigated 'H' and 'P' and found they were unregulated.
- If Santander had warned her about the risks involved, she would've looked more closely into 'M' and challenged him, regardless of their relationship.
- There is no evidence that she was willing to take high risks or had a history of speculative investments or gambling and can say with confidence that a warning from Santander would've exposed 'P's *'false pretences'* and stopped her from sending her payment, thereby preventing her loss.
- Why had we treated her case differently to an identical case upheld by the Financial Ombudsman?

Mrs B's complaint has now been referred to me for 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 Mrs B 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 Mrs B's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say 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 issue in this complaint – that being whether Santander could've prevented Mrs B's loss.

I also acknowledge Mrs B is unhappy that the Financial Ombudsman reached a different outcome in relation to another complaint that she says has very similar circumstances. But we consider each complaint on their own individual merits and so, I won't be commenting on this other complaint here.

For context and background, in reviewing Mrs B's complaint, I've taken account of the evidence presented in her daughter's complaint (against a different bank) – given her daughter also decided to invest in 'H' at the same time based on the same information provided by 'M'. But my findings in this decision relate only to the actions of Santander.

Following a court hearing in July 2020, it's now accepted that Mrs B has likely been the victim of a scam. But I accept the £50,000 transaction she made towards the investment was an authorised payment. So, Mrs B 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.

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.

The question then arises whether Santander ought reasonably to have held such suspicions or concerns in relation to Mrs B's £50,000 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 Mrs B when she made the payment over the phone. Specifically, whether it should've done more than it did before processing the payment — and importantly, 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 Mrs B's payment instruction on 8 April 2018. This payment was significantly larger than usual payments for Mrs B's account in the previous 12 months and was being made to a new payee. Santander has been unable to evidence the exact conversation that it had with Mrs B when the payment was made — but Mrs B recalls being asked about the payment purpose and disclosing that it was for an investment. And Santander have provided a script that it says would've been read out to Mrs B before the payment was processed. So, it seems likely Santander did speak to Mrs B about the payment.

Mrs B thinks Santander didn't go far enough, and that its failure to ask her more probing questions before allowing the payment should, of itself, warrant a finding that Santander could've prevented her loss. But for me to find it fair and reasonable that Santander should refund Mrs B requires more than a finding that Santander ought to have intervened in the £50,000 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 contrary to Mrs B's belief, 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've 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 Mrs B'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 Mrs B had told it to make. Mrs B (and her daughter who also invested in 'H') 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 Mrs B's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mrs B (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 Mrs B about her payment back in April 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 Mrs B 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 a court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either Santander or Mrs B at the time the £50,000 payment was made.

I think it's also likely Mrs B would've told Santander that she had documents from 'H' and 'P' confirming the terms of the investment. Mrs B has said these documents didn't look genuine, as they suggested her funds weren't at risk. But while she understandably has that opinion now; I've seen nothing to indicate she questioned or challenged this information when deciding to invest. In fact, Mr B, on behalf of his mother and sister asked 'M':

'So before we pull the trigger just to confirm if our capital falls by 10% max ['H'] will stop trading and replenish our principal amount back to its original value - effectively no risk....'

To which 'M' confirmed:

'That's correct'.

This suggests to me that, at the time the £50,000 payment was made, the information Mrs B had about 'H' all appeared to her to be entirely genuine – and that as a family, they checked their understanding of the risks before deciding to invest.

I've also thought about Mrs B's point that Santander must've had concerns about the operation of 'P' - given another bank froze 'P's account in January 2018.

Firstly, 'P' was no longer banking with the other bank at the time the £50,000 was made. Secondly, information about any previous concerns another bank might've had about 'P's account isn't something that would've reasonably been known or available to the person Mrs B would've been dealing with at the time of any intervention about her outgoing £50,000 payment. So, even if another bank had previous concerns about 'P's account activity (something I make no finding on), I don't think it's a reasonable expectation for Santander to have made that available to its frontline staff and to have shared information about another customer and bank with customers wishing to make a payment.

Mrs B also maintains that had Santander told her of the risks of unregulated forex investments, then she would've checked the status of 'H' and 'P'. She's said she would then have seen they were unregulated, together with warnings about unregulated forex investment schemes, and this could've prevented her loss.

I've thought carefully about this point and my first observation is that it was made clear to Mrs B in the information from both 'H' and 'P' that they were not FCA regulated. Information from 'H' also says:

'... profits are not guaranteed. Before you decide to deal with ['H'] and any affiliates of the aforementioned firm under common control or ownership you should be aware of all of the associated risks and carefully consider your objectives, financial situation, needs and level of experience. ... products are only suitable for those investors who fully understand the market risk. ['H'] recommends that you seek advice from a separate financial advisor. By trading, you could sustain a total loss of your deposited funds and therefore, you should not speculate with capital that you cannot afford to lose'.

So, Mrs B *had* been made aware of the risks involved before deciding to invest with 'H'. And *had* sought the advice of a financial advisor ('M') who she told Santander was FCA regulated. This information would've all likely reassured Santander (and Mrs B) that the investment was legitimate; and for Santander, reduced the risk associated with the payment. I'm not therefore persuaded that any advice or warnings Santander might've provided to Mrs B about unregulated forex investments would've likely resonated with her.

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 £50,000 payment was made by Mrs B. Because of that, and crucially, because Mrs B told Santander she'd been guided on the investment by an FCA regulated advisor – I don't think it's reasonable to conclude that Santander would've had sufficient concerns to invoke the banking protocol. And even *if* Santander had advised Mrs B to carry out further checks into 'H' or 'P', I think it's unlikely she'd have found anything of concern.

I've thought next about how Mrs B found out about the investment. Mrs B, along with other family members, was taking advice on the investment from 'M'.

Mrs B has said she told Santander that 'M' was FCA regulated, and if further questioned on this by Santander, I think it's likely she'd have said that she'd checked this on the FCA's website. She may also have mentioned that 'M' used to work for FCA regulated 'T', and that his new company, 'A' wasn't yet regulated, but would be soon.

But even if there were concerns about 'M's FCA regulatory status, or that 'A' was not yet FCA registered, this type of unregulated investment could be entered into without obtaining regulated financial advice.

So, the regulatory status of the investment and how Mrs B 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 Mrs B asked Santander to make the £50,000 payment.

Further to that, whilst I fully recognise that Mrs B is now genuinely concerned about 'M's intentions - I've not seen any reason to suggest that she didn't fully trust what 'M' was telling her at the time.

I appreciate Mrs B doesn't consider the pre-existing relationship she and her family had with 'M' to be a mitigating factor here – but I don't agree. This wasn't a situation where Mrs B was contacted unexpectedly by someone she didn't know. She was looking to enhance her income and was able to discuss her options with 'M' and with other family members. She also, sensibly, didn't invest immediately – first reviewing the information provided by 'M' and checking his regulatory status. I think it's also relevant that Mrs B's daughter was also investing in 'H' – reinforcing that as a family, they were satisfied with what 'H' had to offer.

Given all this I don't think, on balance, that any advice or warning from Santander about 'M' (or 'A') would've likely resonated with Mrs B or given her any cause for concern. I agree with Mrs B that her relationship with 'M' didn't mean she wouldn't have challenged what he was telling her. But based on the evidence I've seen, I think it's more likely than not that any concerns that Santander might've raised about 'H' or 'P' (or 'M') would've likely, in my opinion, have been allayed by 'M' or by Mrs B's family members.

All things considered; I don't think it would've been readily apparent in April 2018 that 'H' might be fraudulent rather than a higher risk unregulated 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 Mrs B 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 April 2018 would've led to either Santander or Mrs B 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 Mrs B 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 Mrs B 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 Mrs B 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 Mrs B to accept or reject my decision **before 5 June 2025**.

Anna Jackson
Ombudsman