

The complaint

Mrs and Mr H complain that Santander UK Plc won't refund the money they have lost to a scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. In summary, Mrs H and Mr H wrote seven cheques, all drawn on their account held with Santander for a total of £220,000. The cheques were payable to their financial adviser and were presented for payment between early July 2018 and late November 2018. Mrs H and Mr H understood the money would be invested in a 'broker bond' and that they would receive a regular income from the bond.

Mrs H and Mr H received regular 'income' payments from their financial adviser, although on occasion the payment was late, until late 2023, when Mrs H says the payments became 'erratic'. In early 2024 Mrs H and Mr H told the adviser they wanted to withdraw the money they had invested in the broker bond. The adviser didn't arrange for the money to be returned to Mrs H and Mr H. In October 2024 they contacted the police as they were concerned that they had been scammed. It then came to light that a number of other consumers may also have been scammed by the adviser.

Mrs H and Mr H complained to Santander. They said it should have intervened when the first cheque was presented for payment and explained that the cheques should have been payable to the investment company, not their financial adviser.

Santander did not uphold Mrs H and Mr H's complaint. It said, the payments had been authorised by Mrs H and Mr H and predated the introduction of the Contingent Reimbursement Model (CRM) Code on 29 May 2019. In view of this it said the payments had not been assessed under the standards of the code.

(Even if the payments had been made after the CRM code was in place, because Mrs H and Mr H paid by cheque the Code would not apply as this method of payment isn't covered under the Code).

Mrs H and Mr H were not satisfied with Santander's response and brought their complaint to this service.

Two investigators looked into the complaint but didn't uphold it. They said they were of the view that Santander should have intervened. But, they said that even if it had done so they didn't think, it would have stopped Mrs H and Mr H from making the payments.

In particular, they noted that if Santander had enquired about the payments, it would normally have asked how they had found the investment and whether the adviser was registered with the Financial Conduct Authority (FCA), which he was as an appointed representative. If it had asked whether they were confident the adviser was legitimate, as Mrs H and Mr H had known the adviser for a long time and had previously invested with him, it was unlikely that their answers would have caused any concern.

Mrs H and Mr H did not accept the investigators view. Mrs H explained that although they had known the adviser for a long time, they had lost contact for a number of years. When they met again, he had been a financial adviser for a number of years so Mrs H said she trusted him. Mrs H noted that they had not wanted to invest in anything high risk and reiterated that they would have heeded any warnings from Santander if it had queried why they were sending cheques to their financial adviser.

I asked Mrs H and Mr H to provide me with a copy of the recommendation they received from the adviser and any updates that had been provided to them about their investment. Mrs H has confirmed that they did not receive a written recommendation or any statements and that updates were provided verbally by the adviser.

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 very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Having very carefully considered this complaint, I do not think it should be upheld. I'll explain why.

I am sorry to hear Mrs H and Mr H have lost money, but this doesn't automatically entitle them to a refund from Santander. It would only be fair for me to tell Santander to reimburse Mrs H and Mr H if I thought it reasonably ought to have prevented the payments or it unreasonably hindered recovery of the funds.

Prevention

Good industry practice required Santander to be alert to fraud and scams and to act in its customers' best interests. This is predicated on there having been a fraud or scam. So, a first consideration in determining Santander's obligations here would normally be: were Mrs H and Mr H scammed as they allege? Here though, I don't think the answer to this question makes a difference to the fair outcome to this complaint. This is because if Mrs H and Mr H weren't scammed, Santander had no obligation to prevent the payments, and so I couldn't reasonably hold it responsible for not doing so.

On the other hand, if Mrs H and Mr H were scammed:

- A bank's principal duty is to act on its customers payment mandate under the terms of the account. This position has long been recognised in common law. So, if a bank fails to comply with a validly executed payment order, it could be held liable for damages – as could the drawer- where the payment method used is a cheque.
- What that means is the starting point is that a bank is expected to process payments and withdrawals that a customer instructs it to make without due delay. So, presented with a cheque drawn in accordance with the terms of the account, a bank must honour the payment unless there are legal, regulatory, or contractual grounds which may, in exceptional circumstances, allow refusal of the payment instruction.

- Here it is accepted that the payments were authorised by Mrs H and Mr H, so, under the terms of the account, Mrs H and Mr H are presumed liable for the loss in the first instance. That said, as a matter of good industry practice Santander should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual, uncharacteristic or suspicious transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect a bank to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

In this case, having considered the circumstances of the payments Mrs H and Mr H made, the payments were unusual and extremely large compared to other payments they had made from their account in the previous six months. I understand Mrs H and Mr H had previously made one large payment of £10,000 in May 2018. Given the size and number of the payments they made to their financial adviser, I think they look out-of-line with the usual spending pattern for Mrs H and Mr H's account. So in these particular circumstances, in order to meet its obligations summarised above (assuming, for the sake of argument, that Mrs H and Mr H were scammed), I would reasonably expect Santander to have flagged the payments, and then called Mrs H and Mr H to ask, what the payments were for, and for some background to the payments, and to then have proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam.

So, I've gone on to think about whether appropriate intervention or further questions would likely have made a difference. Ultimately, I don't think any intervention by Santander would have made a difference or prevented the payments. I say this because when Mrs H and Mr H made the payments, they were led to believe they were investing in a legitimate 'broker bond' with the underlying investments held with well-known financial services companies. I'm not aware of any information Santander could or should have known at the time from which it ought to have been concerned Mrs H and Mr H were being scammed.

It could have given Mrs H and Mr H general fraud and scam advice in relation to investing. But ultimately, I don't think I can fairly say it would have been able to give Mrs H and Mr H any information that would have led them to doubt what they already knew, including if they'd undertaken further reasonable research at the time.

I say this because Mrs H and Mr H were receiving advice from a financial adviser. So, even if Mrs H and Mr H had been questioned in more detail about the investment by Santander, I don't think it would've highlighted anything that would've caused concern or led Santander to believe Mrs H and Mr H were at risk of financial harm from a fraud or scam. Furthermore, even if Santander did intervene and tell Mrs H and Mr H to conduct further checks on their investment, I'm not persuaded they would have found any negative information online, as they haven't supplied anything from that point in time that shows this might have been a scam. As Mrs H and Mr H have outlined, they did not have any cause for concern about the investment until early 2024, when they first contacted the adviser about withdrawing their money.

Mrs H and Mr H say that they would not have proceeded with the investment if Santander had stopped and questioned why they were making cheques payable to their financial adviser, rather than the investment companies. I've thought about this point carefully, but it doesn't change my decision. Mrs H and Mr H were receiving professional advice, and I'm not convinced Santander would have been in a position to question what they had been told by their financial adviser, as its role was not to provide investment advice. Likewise I don't think it could reasonably have been expected to know whether their adviser was authorised by the FCA to hold client money.

Recovery

I've also looked at whether Santander took the steps it should have once Mrs H and Mr H contacted it to dispute the payments. After the payments were made, I couldn't reasonably expect Santander to have done anything further until Mrs H and Mr H told Santander that they thought they had been scammed.

As the adviser Mrs H and Mr H sent the money to is no longer trading, it is unlikely that any funds will remain in the beneficiary account.

I realise this means Mrs H and Mr H have lost a significant amount of money. And I'm very sorry they have lost this money. But I think this was ultimately caused by the actions of their adviser, and not Santander. I can't reasonably ask Santander to reimburse Mrs H and Mr H in the circumstances as I don't think it ought reasonably to have prevented the payments or recovered them.

My final decision

My final decision is that, for the reasons I have set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 28 August 2025.

Suzannah Stuart
Ombudsman