DRN-5652278

The complaint

Mr and Mrs S complain that Santander UK Plc won't refund money they say they lost to an investment scam.

Mr and Mrs S are being supported in making their complaint by a representative. But for ease, I'll only refer to Mr and Mrs S in this decision.

What happened

The background to this complaint is familiar to both parties, so I'll only refer to some key events here.

Mr and Mrs S have said that in 2022 they were introduced by a friend to an investment with a company (which I'll refer to here as 'T'). Mr and Mrs S have explained that 'T' undertook investments on behalf of people in a wide range of things such as forex, emerging markets and commodities. They added that investors were promised high returns (5-7% per month) and were reassured by the fact 'T' was regulated in another country (not the UK).

Mr and Mrs S have said that before deciding to invest with 'T', they carried out checks and reviewed 'T''s documentation and brochures. They then made the following payments as part of the investment. The payments were made to an account in Mr and Mrs S's name with a legitimate crypto exchange (which I'll refer to here as 'B'), via its payment processor, before being transferred onto 'T's trading wallet.

Date	Amount
26/05/22	£3,030
05/06/22	£7,000
03/07/22	£350
07/07/22	£5,510
Total	**£15,890**

Santander has said it provided "*static and dynamic*" warnings for "*transfer to investments*" for all payments, and that it spoke to Mr and Mrs S about the £7,000 payment. Due to the passing of time, the call recording isn't available. Mr and Mrs S's recollection is that they were only asked what the purpose of the payment was; to which they confirmed it was for an investment. They said Santander provided no scam warnings.

Mr and Mrs S have said they saw an initial return on their investment, which further encouraged them to reinvest. They said they were later unable to access their account or withdraw their funds, at which point they suspected they'd been scammed.

On 31 January 2024 Mr and Mrs S complained to Santander. Essentially, they thought it should've questioned them about the £7,000 payment, at which point they said the 'scam' would've been uncovered and their subsequent loss prevented. Mr and Mrs S wanted their loss refunded, together with 8% interest for the loss of use of funds.

Santander didn't uphold the complaint. It said the Contingent Reimbursement Model (CRM Code) didn't apply as Mr and Mrs S made the disputed payments to an account in their own name ('B'). And so, it wasn't the point of loss. Mr and Mrs S referred their complaint to the Financial Ombudsman.

Our Investigator didn’t uphold the complaint. In summary, he concluded that he’d not seen conclusive evidence to link Mr and Mrs S to ‘T’, nor had he seen evidence of a loss. Our Investigator also said he hadn’t seen credible evidence to persuade him that ‘T’ was operating a scam when Mr and Mrs S’s payments were made.

Further to the above points, our Investigator added that he thought it unlikely any intervention by Santander would’ve prevented Mr and Mrs S’s loss. This was because they’d been introduced to ‘T’ by a friend who was already investing; ‘T’ was regulated in an overseas jurisdiction, and there were no concerns about it in the public domain at the time the payments were made.

Mr and Mrs S disagreed and asked for an Ombudsman’s decision. In short, they argued ‘T’ was a scam; and that they’d lost money as a result. They provided statements from their account with ‘B’ and said they shouldn’t be penalised for not being able to provide evidence of their links to ‘T’, nor should this cast doubt on their testimony.

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 Mr and Mrs S were hoping for, and so this will come as a disappointment. I’m really sorry to hear about the situation they’ve found themselves in, and I can understand why they’d want to do all they can to recover the money they lost. But I need to decide whether Santander can fairly and reasonably be held responsible. Overall, I’ve decided that it can’t be. I’ll explain why.

In this decision I’ve focussed on what I think is the heart of the matter here. As a consequence, if there’s something I’ve not 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 consider is a fair and reasonable outcome. Our rules allow me to do this, reflecting the informal nature of our service as a free alternative to the courts.

As such, the purpose of my decision isn’t to address every single point raised. My role is to consider the evidence presented by the parties to this complaint, and reach what I think is an independent, fair and reasonable decision, based on what I find to be the facts of the case.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some complaints simply involve high-risk investments that resulted in disappointing returns or losses. Some traders may have promoted these products using sales methods that were arguably unethical or misleading.

However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they don’t necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

It isn’t in dispute that Mr and Mrs S authorised the faster payments they made to ‘B’ for the purchase of crypto. The payments were requested by Mr and Mrs S using their legitimate security credentials provided by Santander. In line with the Payment Services Regulations 2017, consumers are liable for payments they authorise. Santander is expected to process authorised payment instructions without undue delay.

Santander also has obligations to help protect customers from financial harm from fraud and scams. Those obligations are however predicated on the funds having been lost to a fraud or scam.

Mr and Mrs S strongly believe that ‘T’ was operating a scam, and that Santander ought to have intervened in the £7,000 payment. But on researching ‘T’, I can see that it was incorporated in an overseas jurisdiction. It was regulated by the financial services regulator in that jurisdiction at the time of the disputed payments, and ‘T’ remains regulated, albeit under a different name.

While regulatory requirements can vary from one jurisdiction to another, in my opinion, a scammer is highly unlikely to want any kind of regulatory oversight, given the likelihood of its true purpose being discovered.

Further to that, I recognise ‘T’ may not have been regulated to offer services in the UK at the time of Mr and Mrs S’s payments. I also acknowledge that two overseas regulators had issued alerts about ‘T’ about offering services in their jurisdiction without license. And, in 2023, its regulator took steps to address management issues and concerns regarding shareholder influence. While this information does indicate that there may have been some poor business practices in some areas, it’s not enough evidence that ‘T’ was set up to defraud customers, as Mr and Mrs S have claimed.

For completeness, even if I were to accept that Mr and Mrs S had been scammed, had suffered the claimed loss, and Santander ought to have asked more probing questions about the £7,000 payment – I don’t think their loss would’ve likely been prevented. I’ll explain why.

For me to find it fair and reasonable that Santander should refund the payments to Mr and Mrs S requires more than a finding that Santander ought to have intervened. 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 if I find it more likely than not that such a proportionate intervention by Santander wouldn’t have revealed the payments were part of a fraud or scam, then I couldn’t fairly hold it liable for not having prevented them 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 Mr and Mrs S’s instructions without delay. It wasn’t to concern itself with the wisdom or risks of their payment decisions.

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 with ‘T’ wasn’t an investment Santander was recommending or even endorsing.

Santander’s role here was to make the payments that Mr and Mrs S had told it to make. They’d 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 Mr and Mrs S’s circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr and Mrs S (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, where there is an interaction between a customer and a bank before a high value payment is processed, as there was here in respect of the £7,000 payment, I’d expect the bank to take reasonable steps to understand more about the circumstances of that payment.

And so, 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 the £7,000 payment. What matters here is what those steps might be expected to have uncovered at the time.

I think it's more likely than not that Mr and Mrs S would've reassured Santander that they'd carried out checks into 'T' and digested its literature – which was "*professionally made*" and all appeared entirely genuine. Also, they'd have likely mentioned to Santander that they had access to a "*sophisticated and professional portal*" and that the 'T' was in constant contact and "*showed deep and professional knowledge about investments*".

Mr and Mrs S have also told us that they received some returns on their investment; further reassuring them, and Santander, of 'T''s legitimacy.

Furthermore, as there was very little adverse information about 'T' in the public domain at the time of the payments, aside from the investor alerts which I've mentioned above, I'm not persuaded anything about Mr and Mrs S's responses would indicate to Santander or Mr and Mrs S that they were investing in a scam. And most negative reviews were about delays with withdrawals, or customer service issues - which investors were made aware of via T's chat group.

It appears that some scam reviews appeared about 'T' from October 2022, with mention of funds being turned into its own crypto currency coins; and questions raised about the license of 'T'. But again, this was announced to investors in advance.

I think it's also of significance here that Mr and Mrs S were introduced to 'T' by a friend who had been investing with 'T' for over a year and "*had realised a good return on their investment over that time period".* So, if Santander had raised any concerns about 'T', I think there's a strong possibility that those concerns would've been allayed by Mr and Mrs S's friend.

All things considered, I can only reasonably expect any intervention or enquiries made by Santander to have been proportionate to the perceived level of risk of 'T' being fraudulent.

So, even if I had been persuaded, from the evidence I've seen, that 'T' was a scam and that Mr and Mrs S had suffered the claimed loss as a result, I don't think, on balance, that a proportionate enquiry in 2022 would've led to either Santander or Mr and Mrs S considering 'T' 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 instructions, or for not preventing Mr and Mrs S from making their payments.

On a final note, I've considered whether, on being alerted to the scam, Santander could reasonably have done anything more to recover Mr and Mrs S's losses, but I don't think it could. The payments were for the purchase of crypto that was forwarded on to 'T'. Santander could've only sought to recover funds from the crypto provider ('B'), but no funds would've remained. And if they did, they would've been in Mr and Mrs S's own control to access.

I have a great deal of sympathy for Mr and Mrs S and the loss they've suffered. But it would only be fair for me to direct Santander to refund their 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

For the reasons given, 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 S and Mr S to accept or reject my decision **before 28 August 2025.**

Anna Jackson
Ombudsman