

The complaint

Mr A complains that Santander UK Plc didn't do enough to protect him from the financial harm caused by an investment scam, or to help him recover the money once he'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In November 2019, Mr A received a phone call from someone I'll refer to as "the scammer" who claimed to work for Company S. The scammer explained that Mr A could make returns of 5 to 7% by placing bets on multiple sporting events using an algorithm.

Mr A wasn't an experienced investor, but he did some research which included checking reputable review sites, noting the reviews were all positive. And he was satisfied the scammer seemed professional and knowledgeable, and that he could trust her to make the investment profitable.

The scammer sent Mr A a link to S's website, which included an 'About Us' section, FAQs, a 24/7 live chat option, and full details of the company directors. He explained that he would be given an online trading account and that he'd be assisted by a broker.

Mr A opened a trading account which required him to provide two forms of photo ID, and on 25 November 2019 and 10 January 2020, he made transfers for £10,000 and £20,000 to a cryptocurrency exchange, having transferred £30,000 into his Santander account on 22 November 2020.

Mr A realised he'd been scammed when he was asked to pay further funds to exit the investment. He then contacted the details on the Companies House website and discovered the genuine company wasn't associated with the scam company. He complained to Santander on 28 February 2020 with the assistance of a representative who argued that the spending was unusual for the account and that it should have asked probing questions and given an effective warning which would have positively affected his decision making.

The representative said Santander should have intervened before the first payment because it was a high value payment following a large credit into the account, and had it done so it would have detected that the investment had the hallmarks of a scam and warned him that he was at high risk of being scammed.

Santander said the payments weren't covered under the Contingent Reimbursement Model ("CRM") Code and that it had contacted the recipient account, but no funds remained.

Mr A wasn't satisfied and so he complained to this service with the assistance of his representative. He said he'd believed the investment was genuine having carried out due diligence and that if Santander had warned him that he was falling victim to a scam, he wouldn't have sent any further funds.

Responding to the complaint, Santander explained that it intervened before the first payment and Mr A provided misleading information, confirming he found the investment online, he hadn't been cold called, he'd spoken to S directly to verify the investment, he'd confirmed the beneficiary account details, and he'd checked S on the Financial Conduct Authority ("FCA") website, and on Companies House. It then provided a scam warning relevant to investments.

Our investigator has recommended that the complaint should be upheld. She said the Contingent Reimbursement Model ("CRM") Code doesn't apply to card payments, international payments, or to payments to accounts in the consumer's own name.

She further explained that when Santander asked for the transfer reason before the first transaction, Mr A said "investment", and was engaged in a call where he confirmed the payment was for an investment. He denied being cold called, and said he'd been doing research over the last few months, the company was registered on the FCA website, and he'd received the account details in an email.

Our investigator commented that Mr A had wrongly confirmed he'd checked S on the FCA website, but considering the high value of the payment, and the fact Santander was on notice that it was for an investment, she thought it should have asked whether there was a third-party broker involved, the nature of the investment, the name of the company, and the expected returns.

Had it done so, as there was no evidence of coaching and Mr A believed he was dealing with a genuine company, she thought he'd have shared the existence of a third party, that he'd found S online, and that the returns were guaranteed, and Santander would have been on notice that he was falling victim to a scam. It could then have warned him about investment scams and told him about the importance of checking the company was registered with the FCA, in response to which she thought he'd have paused and made further checks, which would have uncovered the scam. So, she thought Santander should refund the money he'd lost.

She didn't think the settlement should be reduced for contributory negligence because Mr A was an inexperienced investor, so he wouldn't have known the paperwork wasn't real. And the scam website looked professional, and the email he received from the scammers stated his funds would be protected. She accepted he should have been concerned that he was asked to deposit more funds when returns weren't received, especially when he was told the returns would be received monthly, but she was satisfied the scammer provided a plausible explanation which would have eased his concerns.

Finally, she was satisfied Santander did what it ought to have done, when trying to recover the funds and she didn't think he was entitled to any compensation.

Santander has asked for the complaint to be reviewed by an Ombudsman arguing that further questions wouldn't have uncovered the scam because Mr A wasn't truthful during the detection call, and there would have been no reason to probe further if he didn't disclose the existence of the broker. In addition, it has argued that the fact S wasn't FCA registered or on Companies House wouldn't have confirmed it was a scam, and Mr A said he'd already checked the FCA website.

It has also argued that Mr A failed to perform checks and took the investment at face value even though he had no investment experience, and he gave inaccurate information which stopped Santander from assisting him.

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 largely the same reasons.

I'm satisfied Mr A 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr A is presumed liable for the loss in the first instance.

There's no dispute that Mr A was scammed, but although Mr A didn't intend his money to go to scammers, he did authorise the disputed payments. Santander is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether Santander could have done more to prevent the scam from occurring altogether. Santander ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it did enough when he tried to make the payments.

Santander intervened when Mr A made the first payment on 25 November 2019, and so I've considered whether it did enough. I've listened to the call, and I note he was asked why he was making the payment, whether he'd been cold called, and whether he'd checked the FCA register. He was also asked how he'd got the account details and whether he was suspicious about the payment. Mr A told the call handler he was making an investment, he hadn't been cold called, he'd checked the FCA register, he'd received the account details by email and confirmed them with the company, and he didn't have any suspicions.

I've considered whether the questions were sufficiently probing, and I don't think they were. Significantly, Mr A told the call handler at the start of the call that the payment was for an investment, but they didn't ask him anything about the investment, and I think they should have done.

I accept some of Mr A's responses weren't accurate, but there's no evidence he was cold called, and I think it's likely he was referring to the cryptocurrency exchange when he said the company was registered with the FCA. So, I don't agree he intentionally misled Santander.

At the point Mr A told the call handler that he was investing, I would expect them to have asked whether there was a third party involved and if so, how he'd met them, whether he'd been promised unrealistic returns, and whether he'd made any withdrawals. And because there's no evidence he was coached to lie and I don't accept he misled the call handler during the call, I'm satisfied he'd have said he was being assisted by a broker who worked for S and that he'd opened a trading account, and that this would have alerted the call handler that he was likely falling victim to a scam.

I would then expect the call handler to have warned Mr A about investment scams, including the risk of cloned companies, and, specifically, how to check S was genuine by contacting the details on the Companies House or FCA websites, and making enquiries to ensure the

investment is genuine. Mr A's representative has described that he did some very basic due diligence which included checking review sites, and I've no reason to think he wouldn't have acted on advice to check the investment was genuine before proceeding with the payment. So, I think he'd have followed Santander's advice to contact S and discovered he was being scammed.

Consequently, while I'm satisfied Santander did intervene before the first payment, I don't think it did enough and, had Mr A been asked more questions and been given better scam education, I think his loss might have been prevented. So, I'm minded to direct Santander to refund his loss from the first payment onwards.

Contributory negligence

I accept there's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence but, in the circumstances, I don't think Mr A was to blame for the fact he didn't foresee the risk, and I'm satisfied that he did what he thought was reasonable due diligence.

I don't think it was unreasonable for Mr A to have believed what he was told by the broker in terms of the potential returns. He was an inexperienced investor and so this was an area with which he was unfamiliar so he wouldn't have known how to check the information he'd been given. This unfamiliarity was compounded by the sophisticated nature of the scam and the fact he trusted the broker believed the trading platform was genuine. So, I don't think he can fairly be held responsible for his own loss.

Recovery

I don't think there was a realistic prospect of a successful recovery because Mr A paid an account in his own name and moved the funds onwards from there.

Compensation

The main cause for the upset was the scammer who persuaded Mr A to part with his funds. I haven't found any errors or delays to Santander's investigation, so I don't think he is entitled to any compensation.

Putting things right

My final decision is that Santander UK Plc should:

- refund the money Mr A lost from the first payment onwards.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If Santander UK Plc deducts tax in relation to the interest element of this award it should provide Mr A with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 6 January 2026.

Carolyn Bonnell
Ombudsman