

The complaint

Mr and Mrs P complain that Santander UK Plc didn't do enough to prevent the loss they suffered when they fell victim to an alleged scam.

What happened

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

Between 2017 and 2019, Mr and Mrs P made a series of investments through 'S', who were a group / large portfolio of companies. Relevant to this complaint are six transfers totalling £300,000 which were made across 2018 and 2019 and credited S' account with Santander. Five payments were sent from Mr and Mrs P's account with 'R' and one from their account held with Santander. Mr and Mrs P received returns until the payments stopped in 2019. S subsequently entered liquidation. Mr and Mrs P now allege that S was operating a scam / fraudulent investment scheme. They argue that Santander in relation to the payment made from Mr and Mrs P's account with them, and as the recipient bank (for all six payments) ought to have identified warning signs of fraud / misconduct and failed to take action to disrupt the flow of funds and prevent their losses.

Santander didn't uphold Mr and Mrs P's complaint. Unhappy with their response Mr and Mrs P referred their complaint to our service. Our Investigator explained that our powers to investigate complaints are set out in the dispute resolution section of the Financial Conduct Authority's (FCA) Handbook known as 'DISP' rules. These say to consider a complaint the complainant (here Mr and Mrs P) must have a listed relationship with Santander and the complaint matter must arise from that relationship. She concluded that we were therefore able to investigate Mr and Mrs P's complaint about the payment they sent from their Santander account (in Santander's role as the sending bank). However, regarding Santander's role as the receiving bank, the rules (in these circumstances) limit our investigation to acts or omissions occurring on or after the 31st of January 2019. For what she said she could consider, she didn't recommend the complaint should be upheld.

Mr and Mrs P asked for an Ombudsman's decision. In an effort to resolve the matter quickly and informally, I wrote to both parties explaining why we couldn't investigate all aspects of Mr and Mrs P's complaint and I set out in greater detail my intended decision (for that which I could). Santander didn't respond. Mr and Mrs P didn't agree to the complaint being closed informally. They asked for a small number of points to be taken into consideration before I finalise my decision.

For the avoidance of any ambiguity, I have already issued a jurisdiction decision, so that both parties are clear about the scope of what we can and can't look into.

This decision is about the aspects of Mr and Mrs P's complaint I do have the power to investigate.

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 can't uphold this complaint. I know this will be disappointing for Mr and Mrs P, so I'll explain why.

I understand Mr and Mrs P feel a fully reasoned decision is needed, particularly in light of the wider issues they have raised about complaints involving receiving banks. However, I think it would be helpful for me to start by explaining that we are a quick and informal dispute resolution service. Our role is not to comment on every point raised or on industry wide issues in general terms. Instead, we focus on the specific facts of the individual case before us and decide whether, on the balance of probabilities, the respondent has acted fairly and reasonably. With the purpose of my decision being, to set out my conclusions and reasons for reaching them. My findings here focus on what I consider to be the central issues. If I don't mention any specific point, it's not because I've failed to take it on board and / or think about it, it's just that I don't think I need to comment on it to explain my decision. This isn't intended as a discourtesy; our rules allow me to do this. This simply reflects the informal nature of our service.

The FCA in 'DISP' defines a complaint to be any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, any person about the provision of, or failure to provide, a financial service, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience. So, in Mr and Mrs P's case the central question I have considered is whether Santander could reasonably have prevented the financial loss they have suffered. This includes its actions as the sending bank (in relation to one payment); the receiving bank (in relation to all the payments); and its response upon receipt of notification of fraud (as both Mr and Mrs P's bank and the recipient bank).

Mr and Mrs P have said they do not believe the question of whether S was operating a scam is relevant to the monitoring of the recipient account. I understand why they take that view, they feel they were victims and simply want their money back. But if the payments were genuine (i.e. there was no scam to protect against) then Santander would have been acting correctly under its mandate and even if there was something it ought to have done and didn't do (from a monitoring perspective) it couldn't fairly be concluded that by not doing so (in its capacity as both the sending and receiving bank) caused a loss to Mr and Mrs P. So, the question of whether S was a scam / fraudulent investment scheme is a crucial one. But we don't always need to make a finding on this point, if the outcome is not affected – which is what I have done here. I've examined Mr and Mrs P's complaint on the more favourable basis that being even if I were to accept (which to be clear I don't) that S were operating a scam / fraudulent investment.

I want to acknowledge Mr and Mrs P comments that they feel my findings focus on whether they would've proceeded with the payment from their account and the possibility of recovery in 2024. I'd like to assure them I have also looked into their concerns about Santander's role as the recipient bank and whether it could've reasonably prevented their losses through its monitoring of the recipient account. My findings in relation to those matters (which fall within our jurisdiction) are set out in below under "*Matters arising from Mr and Mrs P's relationship with Santander as the recipient payment service provider (PSP) [DISP 2.7.6R(2B)]*". I also note their concerns that a full and through investigation likely hasn't been completed due to the short time that elapsed between our service receiving information from Santander and the Investigator reaching their outcome. But I'd like to assure Mr and Mrs P that I have carefully reviewed everything they and Santander have submitted before reaching my decision.

Matters arising from Mr and Mrs P's 'customer' relationship with Santander [DISP 2.7.6R(1)]

On 8 May 2019, a payment of £15,000 was made from Mr and Mrs P's Santander account.

I appreciate Mr and Mrs P considers that Santander should've done more at the time of processing the payment. But as I've said above if there is no fraud / scam for it to protect against, I can't say it has failed by not intervening in the payment made. There is no obligation for Santander to provide Mr and Mrs P with advice about any investment or to seek to protect them from bad bargains or similar. Santander's principal duty is to process a payment that its customer (here Mr and Mrs P) instructed it to make without undue delay. And even if I were to accept S were operating a scam, and that Santander ought to have intervened in the disputed payment it doesn't entitle Mr and Mrs P to a refund from Santander for the reasons below.

Santander were a signatory of Lending Standard's Boards Contingent Reimbursement Model (CRM) Code – a voluntary code through which victims of authorised push payment (APP) fraud, in certain circumstances, could receive reimbursement of their losses. The CRM code came into force on 28 May 2019 and only covers APP payments completed between UK domiciled accounts on or after this date. This is set out at section DS2(2), where it says: "*This Code does not apply to ... (c) any payments completed before the coming into force of this Code*". As the disputed payments here were made before the CRM code came into effect, they are not covered. So the CRM Code can't be used as a basis to direct Santander to do more.

The complaint against Santander as Mr and Mrs P's bank ultimately fails on causation – this in simpler terms is the 'but for' test. So, the question being 'but for' Santander's alleged failure, here that being intervening before allowing the disputed payment to be made, would the loss have been avoided on the balance of probabilities? Here I'm not persuaded intervention would've prevented Mr and Mrs P from proceeding with the payment, I say this because Mr and Mrs P had previously made (before the May 2019 payment) payments to this scheme and received returns, which likely would've reinforced their belief in its legitimacy. This pattern of successful prior transactions would likely have built significant trust in the investment opportunity with S. A reasonable intervention by Santander – proportionate to what could be expected (such as asking clarifying questions about the purpose of the payment, highlighting general risks of investment scams or advising caution) would not have been sufficient to dissuade them from making the payment. The sophistication of what has happened here is also a key factor. At the relevant time, even a diligent level of personal research, or scrutiny by Mr and Mrs P (prompted by Santander's warnings) was unlikely to uncover a scam. Hindsight makes it easy to say Mr and Mrs P would've stopped if warned, but my decision must be based on the contemporaneous evidence, not retrospective knowledge of a potential alleged scam / investment loss.

For completeness, I've also considered if there was anything Santander did or didn't do that impacted on whether anything could be recovered from the recipient account. And ultimately, I'm satisfied that, upon receipt of notification of fraud, there wasn't anything it could've done that would've resulted in the recovery of Mr and Mrs P's funds.

Matters arising from Mr and Mrs P's relationship with Santander recipient payment service provider (PSP) [DISP 2.7.6R(2B)]

Mr and Mrs P have referred to published decisions involving receiving banks and drawn from this what they consider to be relevant points / conclusions reached. But as I've said above each case is considered on its own merit. I can't comment on other decisions reached. I fully accept that, in some complaints, the specific circumstances of the account activity may have been such that closer monitoring could reasonably have uncovered the scam and prevented further losses. However, that is not the position in Mr and Mrs P's case, for the reasons I have already explained to them. Those reasons remain unchanged after reviewing the further submissions Mr and Mrs P have made.

The Financial Ombudsman Services' function is not to act as a regulator policing a firm's overall compliance. I'm not required to investigate systemic issues, monitor a firm's entire Anti-Money Laundering (AML) program for weaknesses in the broader sense, or impose fines and penalties on firms for regulatory breaches – that is the FCA's role. My role is to consider each case on its individual facts and merits (for the aspects within our jurisdiction). Here, I must decide if there has been a failing by the respondent (Santander) in the specific circumstances of this case, and crucially whether can it be said that any failing is / was the direct reason for the loss being claimed. Without that link between Santander's act and / or omission and Mr and Mrs P's loss I can't fairly and reasonably ask Santander to do more to resolve the complaint. This distinction is important, because generally complainants think just because a respondent failed in its transaction monitoring it should pay compensation. But in cases such as these, where Santander (as the recipient bank) owes no contractual obligation and no duty of care to Mr and Mrs P as the payer of funds into one of its customers' accounts. To ask it to provide a refund requires clear evidence that its failure in relation to the recipient's account was the direct and effective cause of the loss suffered. Where multiple intervening steps would have been required, where outcomes remain uncertain, or where evidence is lacking that Santander's action(s) would have prevented the loss, it is neither fair nor reasonable to require it to refund the money.

I appreciate Mr and Mrs P say that what is central to their complaint is whether Santander, acting as a receiving bank in relation to the March 2019 and May 2019 payments, discharged its ongoing AML and transaction monitoring obligations in line with UK regulatory expectations. And they think that the relevant question is whether the activity on the account held with Santander UK displayed characteristics which a reasonable receiving bank should have identified as presenting elevated financial crime risk at the time, regardless of whether fraud had yet been formally established.

However, I don't need to make a finding on this point to reach what I consider to be a fair and reasonable outcome here, because as I've explained already to Mr and Mrs P that even if I find that Santander had failed in the monitoring of its customer's account, this alone wouldn't result in me being able to ask Santander to provide them with a refund of their outstanding losses. Crucially, I would still need to go on and consider whether its failing in the monitoring can fairly and reasonably be said to be the cause of all or some of Mr and Mrs P's loss. Having carefully considered the evidence available to me I'm not persuaded that in these specific circumstances I can say that it was.

The nature of what has gone on here is complex and sophisticated, and whilst I have considered all the points Mr and Mrs P have raised about what they consider to be “*contextual risk indicators surrounding the account activity*”. Many of these are with the benefit of hindsight. I must consider the position Santander would’ve been in, and assess based on that, and all of what was known (or what could fairly have been expected) at the time as to whether its actions were reasonable. Santander’s obligation to monitor accounts, does need to be balanced against allowing its customers to operate. So, when reviewing the account operation, it’s easy to interpret it through the lens of what we know today and highlight things that now can be considered ‘red flags’, but when these things are balanced against the other activity and / or not looked at through the scam lens they may not stand out or appear remarkably suspicious. Expectations must also be balanced and align with what can reasonably be expected of a bank. Santander are not the regulator nor are they law enforcement. Their role requires them to monitor and report – not act as a forensic accountant and / or audit a limited companies commercial decision making.

From the evidence available and what is known about S’ operations, even if Santander had carried out further due diligence, on balance, S would’ve been able to present credible evidence of genuine business activity. I must also have regard for the fact that even years later, following extensive detailed investigations (which I note are still ongoing), no conclusive conclusion relating to fraud has been reached yet and there has been no criminal conviction. So I don’t think in these circumstances any reasonable level of scrutiny that could fairly and reasonably have been expected of Santander would’ve got to the point where it would’ve been able to conclude that S were operating a scam and to have reported this in such a way that it would’ve stopped this or impacted the loss suffered. The evidence also shows that S maintained accounts with other institutions and had access to other accounts through linked enterprises. So even if Santander had concluded the activity was outside of its risk appetite and / or taken a commercial decision to close or block the account in question before Mr and Mrs P’s payments arrived (or even after), I’m not persuaded any reasonable step it would’ve taken on or after 31 January 2019 would’ve resulted in Mr and Mrs P being in a meaningfully different position. I say this because if Santander had blocked or closed the account before May 2019, Mr and Mrs P simply would’ve been directed to send their funds elsewhere, and any funds which may have remained in the account upon closure, in the absence of fraud reports / exposing a scam, on balance, most likely would’ve been transferred to another account held by S – so they wouldn’t have been available for recovery when the alleged scam was reported in 2024. Similarly, if the account had been closed after the payments (on the basis of risk appetite), I don’t think Santander would’ve had any legitimate reason to withhold any remaining balance from their customer when the account was closed. So, this too wouldn’t have impacted Mr and Mrs P’s loss.

Taking this altogether I’m not persuaded that reasonable monitoring and / or intervention on or after 31 January 2019 could have disrupted the flow of funds, limited Mr and Mrs P’s subsequent losses, or triggered earlier awareness of wrongdoing as they have suggested. It’s just too much of a stretch, given all the facts, and the steps which likely would’ve needed to have happened, to say that Santander’s act(s) and / or omission(s) was / were the direct cause of Mr and Mrs P’s loss.

For completeness, I’ve also considered if there was anything Santander did or didn’t do in its capacity as the recipient bank that impacted on whether anything could be recovered from the recipient account. And ultimately, I’m satisfied that, upon receipt of notification of fraud (in 2024), there wasn’t anything it could’ve done that would’ve resulted in the recovery of Mr and Mrs P’s funds.

Ultimately, despite my natural sympathy for the situation in which Mr and Mrs P find themselves, as I've not been persuaded that Santander failed in such a way that caused their losses or hindered recovery of those funds, it follows that I can't fairly and reasonably ask it to do anything further to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 28 April 2026.

Sonal Matharu
Ombudsman