

The complaint

Mr S complains that Santander UK Plc (Santander) won't refund money he lost in an investment scam.

What happened

Mr S is represented by a third-party legal firm, but I will refer to Mr S as the complainant.

What Mr S says:

In May 2020, Mr S was introduced to someone who claimed to be an investment broker (who I will call 'A'). The broker told Mr S he could make a substantial profit by investing in IT companies in India and the UK. Mr S agreed to invest and signed seven investment agreements totalling approximately £215,000. The returns were said to be 3% per month, to be paid monthly. The agreements said Mr S could ask for the money back if the investment income wasn't paid. The investments were guaranteed by a third party – said to be the father of A. Mr S paid £169,200 from his Santander account, and he said he paid a further £137,783 from another bank account. Mr S received payments totalling £44,900 from A (into his limited company account with Santander) as shown in the schedule:

Date	Payments	Amount paid out	Amount paid into Ltd Co. account
27 May 2020	Faster payment to A	£15,000	
1 June 2020	(Inward payment from A)		£1,100
9 June 2020	Faster payment to A	£15,000	
9 June 2020	Faster payment to A	£15,000	
28 June 2020	Faster payment to A	£5,000	
1 July 2020	(Inward payment from A)		£1,100
3 August 2020	(Inward payment from A)		£1,100
	(Inward payment from A)		£900
1 September 2020	Faster payment to A	£5,000	
2 September 2020	Faster payment to A	£5,000	
2 September 2020	(Inward payment from A)		£900

2 September 2020	(Inward payment from A)		<i>£600</i>
2 September 2020	(Inward payment from A)		<i>£5,000</i>
3 September 2020	(Inward payment from A)		<i>£1,100</i>
10 September 2020	(Inward payment from A)		<i>£3,000</i>
11 September 2020	Faster payment to A	£10,000	
11 September 2020	Faster payment to A	£20,000	
12 September 2020	Faster payment to A	£20,000	
21 September 2020	Faster payment to A	£1,000	
5 October 2020	(Inward payment from A)		<i>£900</i>
13 October 2020	(Inward payment from A)		<i>£1,500</i>
12 November 2020	Faster payment to A	£100	
11 November 2020	(Inward payment from A)		<i>£1,400</i>
20 November 2020	(Inward payment from A)		<i>£1,500</i>
26 November 2020	(Inward payment from A)		<i>£4,000</i>
7 December 2020	Faster payment to A	£5,000	
8 December 2020	Faster payment to A	£20,500	
8 December 2020	(Inward payment from A)		<i>£900</i>
9 December 2020	Faster payment to A	£20,000	
10 December 2020	Faster payment to A	£3,500	
4 January 2021	(Inward payment from A)		<i>£1,000</i>
29 January 2021	(Inward payment from A)		<i>£1,300</i>
4 February 2021	(Inward payment from A)		<i>£1,000</i>
4 March 2021	(Inward payment from A)		<i>£1,500</i>
9 March 2021	(Inward payment from A)		<i>£1,400</i>
10 March 2021	(Inward payment from A)		<i>£3,000</i>
12 March 2021	(Inward payment from A)		<i>£1,750</i>
16 April 2021	(Inward payment from A)		<i>£1,400</i>

4 May 2021	(Inward payment from A)		£500
6 May 2021	(Inward payment from A)		£500
21 May 2021	(Inward payment from A)		£250
3 June 2021	(Inward payment from A)		£3,500
18 June 2021	Faster payment to A (from business account)	£1,500	
18 June 2021	Faster payment to A (from business account)	£900	
18 June 2021	Faster payment to A (from business account)	£500	
22 June 2021	Faster payment to A (from business account)	£6,200	
18 December 2021	(Inward payment from A)		£300
18 December 2021	(Inward payment from A)		£500
27 January 2022	(Inward payment from A)		£1,000
12 March 2022	(Inward payment from A)		£1,000
Total		Out: £169,200	In: £44,900
Net loss		£124,300	

In May 2021, Mr S gave A notice that he wished to withdraw the funds and asked that two amounts of £100,000 be repaid to him. A assured Mr S on a number of occasions that the money would be repaid – one amount of £35,000 was to be paid immediately, and then further instalments of £35,000 per week, after July 2022. No payments were made - A gave a number of reasons why there was delay.

Mr S says the payments were out of character for the normal activity on his Santander account and the bank should've done more to protect him – in accordance with the Contingent Reimbursement Model Code for Authorised Push Payment Scams. None of the payments to A were questioned – he said he was the victim of a scam and should be reimbursed under the Code.

What Santander said:

No substantive final response was issued to Mr S. In November 2022, Santander wrote to say they were investigating the claim and tried to get in touch with Mr S. They gave referral rights to our service in the letter.

In their submissions to us, Santander said:

- This was a civil claim and not a scam.
- Investment agreements had been signed; and payments to Mr S had been made – almost a third had been paid as a return, so the loss was less than he had at first said – and implied this was a civil claim and not a scam.
- Mr S should pursue the guarantor, who appeared to be A's father.
- Mr S hadn't made any checks on the broker recipient (A) and had no prior investment experience.
- The beneficiary's' account (A) had been closed by that bank in March 2022.

Santander didn't refund any money.

Our investigation so far:

Mr S brought his complaint to us. Our investigator didn't uphold it. He said:

- It was a civil claim and not a scam, there were investment agreements signed and Mr S sent his money willingly to A.
- There wasn't enough evidence to say this was a scam; as Mr S made the payments over two years and received returns over a long period of time – this wasn't the typical behaviour of a scammer.
- Even if Santander had stopped the payments, it wouldn't have made any difference – as Mr S would've gone ahead anyway.

Mr S didn't agree, and said:

- Santander should've stopped the payments. Because they didn't, there is no knowing if Mr S would've gone ahead or not.
- Mr S believed the investment broker was legitimate, as was the investment. Mr S completed sufficient due diligence.
- The payments were to a new payee and should therefore have been questioned.
- The payments that Mr S received were likely part of the scam - to encourage him to invest more money – this was typical of a scam.
- Broker A intended to obtain the money by deception: that constitutes a scam. Therefore, it should be considered under the CRM Code for APP (Authorised Push Payments).

Mr S asked that an ombudsman looks at his complaint, and so it has come to me to make 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.

As the first step, I need to decide whether this was a scam (where a scammer takes money from a customer with no intention of providing any services or returning the money to them)

or a civil dispute (where a payment is made to a legitimate trading company or business, but the promised services or products don't materialise, or are sub-standard).

If this was a scam – then banks (including Santander) must follow industry and regulatory guidance to check certain payments and in some circumstances, protect customers by stopping the payments and contacting customers about them. And where banks haven't followed the guidance, they can be asked to refund them. This is called 'Authorised Push Payments' guidance (APP), and the Contingent Reimbursement Model Code may apply in certain circumstances.

But where payments are made to a business for work to be done, or as in this case – for an investment to be made - then such principles don't apply. This is then classed as a civil dispute, and for which banks normally have no liability, or obligations to check payments.

I therefore looked at Mr S' complaint with this in mind. I can see this is clearly a civil dispute between Mr S and A. I say that as:

- Mr S signed investment contracts. I reviewed these and each one sets out the terms of the investments. They are as follows:
 - o 27 May 2020: £15,000, return 6% per month.
 - o 8 June 2020: £30,000, return 5% per month.
 - o 31 August 2020: £10,000, return 5% per month.
 - o 31 August 2020: £5,000 (in INR), return 5% per month.
 - o 30 November 2020: £100,000, return 3% per month.
 - o 30 November 2020: £50,000, return 4% per month.
 - o 7 December 2020: £5,000, return 5% per month.
- I noted that these total £215,000 – and don't match the funds sent from Mr S' account with Santander; but I assume the balance of funds were sent from Mr S' other bank account.
- To set out the terms of an investment in this way – isn't the normal behaviour of a scammer.
- I noted that by 10 September 2022, Mr S had received a return of £14,800 in payments from A – equal to about 4% per month (£60,000 had been sent from his Santander account by then, between May 2020 and September 2020). So – this appeared to be in line with the investment agreements.
- I agree with Mr S' point that a scammer will likely entice further money to be paid to him/her by paying some money to the victim – but to pay such a large sum of money isn't typical of a scammer. And, here, over time, A paid back £44,900 – such a large amount isn't typical of a scammer.
- The payments made by Mr S to A were made over a period of 22 months – so he had an opportunity to review what was going on - and made a considered decision to send further funds.
- I didn't see any evidence that A tricked him into making the payments, for example by promising returns of a certain amount if he sent more money. Mr S seemed to make the investment without any such behaviour – which wouldn't seem to me to indicate this was a scam.

Therefore, I don't consider this is a complaint where Santander needed to apply Authorised Push Payment scam principles or the CRM Code. That means they didn't need to check the payments or consider a refund.

I consider it to be a civil complaint – Mr S made a series of investments which unfortunately proved to go wrong. During our investigation, we found out that A has filed for bankruptcy, and so it's reasonable to suggest that Mr S finds out more about that and approach the trustee in bankruptcy to lodge a claim – no doubt his solicitors will be able to help with that. He might also approach the guarantor for repayment in accordance with the agreements – I noted the guarantor signed them also.

Recovery: we looked into whether any funds could be refunded by liaising with the recipient bank. But - they advised us that A's account had been closed, and therefore no money remained which might have possibly been repaid.

Mr S has lost a lot of money. I was sorry to learn of his circumstances and what happened. He will therefore be disappointed by my decision, but I'm not going to ask Santander to do anything here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 February 2024.

Martin Lord
Ombudsman