

The complaint

Mrs N complains that Santander UK Plc ('Santander') won't refund the money she lost when she was the victim of a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them in detail here. In summary, Mrs N was introduced by friends to a company I'll refer to as L in this decision. L was a betting syndicate run by someone I'll refer to as S. Members invested funds which were to be used to bet on horse races and later to buy racehorses. L had been trading for some years and Mrs N knew people who'd made good profits. She invested £20,000 in April 2018.

It later came to light that the syndicate was a scam. L was wound up and S declared himself bankrupt owing millions of pounds to multiple investors including Mrs N.

When the complaint was brought to this service Santander hadn't investigated a complaint or issued a final response. When she brought the complaint Mrs N said that L and S had many accounts, including with Santander both in the UK and abroad, so Santander should have noticed unusual activity on the accounts and prevented payments from being made. Mrs N said she would like Santander to reimburse her loss and to take a closer look at S/L's accounts.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said that although she thought Santander should have intervened when Mrs N made the payment and asked questions about it, it wouldn't have made a difference in the circumstances of this case. This is because Mrs N's answers to any questions Santander asked wouldn't have indicated a scam risk.

Mrs N wasn't happy with the investigator's findings. I have summarised her main points below:

- Mrs N provided a newspaper article about the amount S owed to creditors.
- The director of L has fraudulently taken money from many innocent victims without ever placing bets.
- Santander and other banks failed to flag up the millions of pounds the director of L was paying into and out of his accounts in the UK and abroad.
- L had traded for many years and was registered at Companies House, so she had no reason to think anything was wrong at the time she made the payment.
- Mrs N provided a screenshot from the internet that said suspicious activity should be reported so that banks can prevent criminals from using the financial system to carry out illegal activities.

The complaint has been passed to me to decide.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

I'm really sorry to hear about what has happened and about what the loss of her funds has meant for Mrs N. There is no question that she and others have been duped into paying money to a scheme that wasn't legitimate. But that doesn't automatically mean that Santander must reimburse Mrs N's loss.

In broad terms, the starting position in law is that Santander is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. It's not disputed that Mrs N made and authorised these payments.

The Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) didn't come into force until after Mrs N made the scam payment, so I can't apply it here. But Santander had a duty to be on the lookout for unusual and out of character transactions.

I agree with the investigator that Santander ought to have intervened when Mrs N made the payment request and asked her proportionate questions to satisfy itself she wasn't at risk of financial harm. Having reviewed Mrs N's bank statements for the twelve-month period before the scam I can see that the largest transaction she made was for just over £3,000 so a faster payment of £20,000 was significantly out of character.

Would intervention have made a difference?

I also need to go on to consider whether this intervention would have prevented Mrs N from making the payment. Only if I am satisfied that intervention at the time of the payment would have uncovered the scam can I fairly ask Santander to reimburse Mrs N's loss.

I think Santander should have asked Mrs N questions about the purpose of the payment, how she found out about the opportunity and the returns she was expecting. I don't consider that Mrs N's responses to such questions would have caused concern or uncovered the scam. Mrs N likely would have been able to provide genuine and persuasive answers about the syndicate because as far as anyone knew it was legitimate at the time.

At the time Mrs N made the payment a family member had shown her the profit he had received from the syndicate and Mrs N (or her husband) knew others who had joined years before and were making a lot of money. As well as this, L was a registered company and the syndicate she was paying into was legitimate as far as anyone knew. It was later revealed that the individual running the syndicate had been misappropriating funds and failing in their obligations to members, but this wasn't known publicly at the time Mrs N made her payment.

Santander may have provided a general warning about fraud and scams and how Mrs N could protect herself against them. But I think it's unlikely Mrs N would have felt such a warning applied or that she'd have done anything differently because the warning could only cover common scams at the time. A scam involving a betting syndicate wouldn't have been included in any such warning.

Mrs N says Santander and other banks failed to flag up the millions of pounds S was paying into and out of his accounts in the UK and abroad. She has asked this service to look into S' accounts. I'm afraid I can't comment on or consider this wider point as I don't have the power to do so. Under the rules that dictate which complaints this service can consider, Mrs N only has the right to bring a complaint against Santander that stems directly from her being a customer of the bank. This service cannot consider banking practice and fraud prevention activity as a whole and this isn't something I can consider as part of this complaint. My role is

to consider individual complaints. This service also can't influence any form of criminal investigation.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 12 December 2023.

Jay Hadfield
Ombudsman