



The complaint

Mr S is unhappy that Santander UK Plc won't reimburse him money that he lost to an investment scam.

Mr S's complaint is brought to this service by his appointed representative. However, for ease of reference, I will refer solely to Mr S throughout this letter.

What happened

In 2017, Mr S paid £5,000 from his Santander account to what he believed was a legitimate investment. In 2021, Mr S became aware that the supposed investment was a scam and that his money was unrecoverable. Mr S wasn't happy about this and felt Santander should have done more to warn him at the time he made the payment that it might be a scam. So, he raised a complaint.

Santander responded to Mr S but didn't feel they'd acted unfairly by following his instructions to pay the £5,000 to his intended recipient in 2017. Mr S wasn't satisfied with Santander's response, so he referred his complaint to this service.

One of our investigators looked at this complaint. They felt that if Santander had intervened before allowing the £5,000 payment to complete in 2017, and had questioned Mr S about his intended investment, that because there was no reasonable indication that the supposed investment was a scam at that time that Mr S would most likely still have made the payment.

Because of this, our investigator didn't uphold the complaint because they felt that any intervention Santander might have made wouldn't have prevented what happened. Mr S remained dissatisfied, so the matter was escalated to an ombudsman for 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.

Having done so, I'd like to begin by confirming that this service isn't a regulatory body or a Court of Law and doesn't operate as such. Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the factors and circumstances of a complaint into consideration.

I also note that Mr S has provided several detailed submissions to this service regarding his complaint. I'd like to thank Mr S for these submissions, and I hope he doesn't consider it a discourtesy that I won't be responding in similar detail here. Instead, I've focussed on what I consider to be the key aspects of this complaint, in line with this service's role as an informal dispute resolution service.

This means that if Mr S notes that I haven't addressed a specific point he's raised, it shouldn't be taken from this that I haven't considered that point – I can confirm that I've read and considered all the submissions provided by both Mr S and Santander. Rather, it should be taken that I have considered that point but that I don't feel it necessary to address it directly in this letter to arrive at what I consider to be a fair resolution to this complaint.

In their response to Mr S's complaint, Santander explained that they were sorry to learn that Mr S had been the victim of a scam. However, in their correspondence with this service, Santander have questioned whether Mr S was the victim of a scam or whether it should be considered that he simply made a bad investment.

This service takes a linear approach when considering complaints about purported scams. And the first step in this approach is to decide whether a scam can be said to have taken place or not.

In this instance, I haven't been able to safely conclude whether Mr S was the victim of a scam here or not. Importantly though, while I don't feel that I can say for certain that Mr S was scammed, if I had concluded that a scam had taken place – and so moved on to the next steps of this service's approach – I wouldn't have found that Santander should be held accountable for Mr S's loss here. And I'll explain why this is the case.

After accepting that a scam has taken place, this service then moves to consider whether the business being complained about should have recognised that the payment being made was unusual and out of character with how their account holder had recently maintained their account. And, if it is felt that the payment should have been recognised as unusual, it would generally be expected that the business would have intervened and contacted their account holder before potentially processing that payment and allowing it to complete.

In this instance, I do feel that Santander should have recognised that the £5,000 payment that Mr S instructed was unusual and out of character with how he'd recently maintained his account. This is because, in the twelve months preceding the payment, Mr S hadn't made any payments of a similar size to a new or third-party recipient – the only exception being another payment of £5,000 made by Mr S a few days before the payment under consideration here, but which I don't feel establishes any 'normal' activity or should mean that the slightly later £5,000 payment shouldn't have been flagged by Santander.

As such, given that I feel that Santander should have recognised that the £5,000 payment instructed by Mr S was unusual, it follows that I feel that Santander should have intervened and contacted Mr S before allowing that payment to complete. But importantly, I also feel that had Santander done so, then Mr S would most likely have been able to answer the questions Santander may have asked of him about the payment and that he would have confirmed to Santander that he still wanted the £5,000 payment to be made.

It must be recognised at this point that, in broad terms, when an account holder instructs a payment from their account, the starting point in law is that a business is expected to process the payment that its customer has authorised - in accordance with the terms and conditions of their customer's account.

Additionally, if a business does intervene before allowing an instructed payment to complete, it isn't the case that the business should advise its account holder to cancel that payment. Rather, the business is expected to ask questions of the customer to check that the customer understands the nature of the payment that they've instructed and is aware of potential scams and the possibility that they might be being scammed.

In this instance, I don't feel that any intervention that Santander may have made in 2017 would have led Mr S to cancel the £5,000 payment to the scammer. And this is because there was no indication at that time that the 'investment' Mr S was making could be a scam.

Instead, at that time, Mr S appeared to be making a payment to a legitimate investment. And I'm satisfied that it was reasonable for Mr S to have believed in 2017 that he was making a legitimate investment and that he wasn't being scammed.

Because of this, I feel it's highly likely that Mr S would have been able to explain to Santander that the instructed payment was for a legitimate investment and that he was confident that he wasn't being scammed and that he would have told Santander to process that payment as per his instruction. And it must be noted that Mr S didn't become realise that something had gone wrong until 2021 – several years after he instructed the £5,000 payment from his Santander account.

This isn't to say that Mr S hasn't been the victim of a scam here, and if he has been then I hope he can recover his money from those responsible for his loss. But it is to say that I don't feel that Santander should fairly be considered accountable for his loss or instructed to reimburse him his £5,000 as he would like. And this is because I don't feel that any reasonable scenario can be hypothesised whereby Mr S wouldn't have made the £5,000 payment in 2017, based on his knowledge and understanding at that time, even if Santander had intervened and questioned him about the payment before allowing it to complete.

In short, I don't feel that there's any action that Santander could or should have taken here that would in all likelihood have resulted in Mr S not making the £5,000 payment in 2017. And because I don't feel that Santander could reasonably have acted such that Mr S didn't make the £5,000 payment, I don't feel they should be considered accountable for Mr S making that payment of for the loss he subsequently incurred.

All of which means that I won't be upholding this complaint or instructing Santander to take any further action here. I realise this won't be the outcome that Mr S was wanting, but I hope he'll understand, given what I've explained, why I've made the final decision here that I have.

My final decision

My final decision is that 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 9 October 2023.

Paul Cooper
Ombudsman