

The complaint

Mrs H complains that Santander UK Plc didn't do enough to protect her when she was the victim of an investment scam.

What happened

The background to this complaint is well known to both parties, and so I'll only refer to some key events here.

Mrs H says that after researching investment opportunities online, on 22 September 2017 she made a £20,000 payment from her Santander account towards an investment with a company which I'll refer to here as ('F').

In February 2023 Mrs H contacted Santander asking for the money to be refunded as 'F' had gone into administration and she believed the investment was a scam. Mrs H said she'd received no warning from Santander at the time of the £20,000 payment – and so she didn't think it had done enough to protect her from financial harm.

Santander said it was likely it had spoken to Mrs H about the £20,000 payment, but due to the passing of time, it had no evidence to support that. It said the evidence it had seen suggested that 'F' was a legitimate business at the time the payment was made, and it had seen no evidence to show 'F' had set out to defraud Mrs H. Santander said this was a civil matter between Mrs H and 'F'. Santander tried to recover the funds from the receiving bank, but no funds remained.

Unhappy with Santander's response, Mrs H referred her complaint to the Financial Ombudsman. She maintained she'd been the victim of an investment scam. And if Santander had appropriately intervened when she made the £20,000 payment, she said her loss could've been prevented.

One of our Investigators considered the complaint but didn't uphold it. In summary, she didn't think any intervention from Santander at the time of the £20,000 payment would've prevented Mrs H's loss. Our Investigator also thought Santander had taken reasonable steps to try and recover the lost funds.

Mrs H didn't agree and asked for an Ombudsman to issue a final decision. She maintained that 'F' was an investment scam and Santander should've known this was the case and taken appropriate steps to warn her before processing the £20,000 payment.

Mrs H also said Santander had been 'F's bank for the period prior to her making the £20,000 payment. She said if Santander had closed 'F's account because of any concerns it had about the legitimacy of 'F' – then it should've warned her when she made the £20,000 payment. With that in mind, Mrs H thought it essential that we find out the reason why Santander closed 'F's account as part of our investigation.

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 decided not to uphold this complaint. I know this is not the answer Mrs H was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation she's found herself in, and I can understand why she'd want to do all she can to recover the money she lost. But I need to decide whether Santander can fairly and reasonably be held responsible for Mrs H's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I've not addressed; it isn't because I have ignored the point. It's simply because my findings focus on what I consider to be the central issue in this complaint – that being whether Santander could've prevented Mrs H's loss.

I accept the transaction Mrs H made was an authorised payment. So, Mrs H is presumed liable for the loss in the first instance.

However, I've considered whether Santander should've done more to prevent Mrs H from falling victim to the scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

So, taking all of this into account, I need to decide if Santander acted fairly and reasonably in its dealings with Mrs H when she made the £20,000 payment, specifically whether it should've done more than it did before processing the payment – and if it had, would that have made a difference. I also need to decide if Santander ought to have done more than it has already done to recover the funds.

Was this a scam?

As our Investigator has explained, whether Mrs H was the victim of a scam, or a failed investment, is a difficult point to resolve conclusively – particularly given the passing of time here. But for the purpose of this decision, I don't need to make a finding on that point. Instead, I'm focusing on whether action by Santander could've prevented Mrs H's loss based on the information available at the time she made the payment.

Should Santander have intervened before processing the payment?

Given the size of the payment and because it was showing as pending for a day before being processed – I think it likely, on balance, that Santander did intervene in the payment in some way. And where there is interaction between a bank and its customer about a payment, we'd expect the bank to ask questions and provide appropriate warnings against potential scams so its customer could make an informed decision as to whether to continue with the payment.

Would intervention by Santander have made a difference and prevented Mrs H's loss?

Because the payment was made in 2017, neither Santander nor Mrs H have any notes or recollections of what was specifically discussed or if any warnings were given. However, in the circumstances of this complaint, I'm not persuaded that any reasonable level of intervention by Santander would've made a difference.

I say this because, even if Mrs H had been prompted by warnings about the potential for a scam to carry out checks, I'm not persuaded this would've given her any obvious cause for concern. 'F' was a registered company and there was no information in the public domain indicating 'F' was a scam. Mrs H has alleged 'F' was running a Ponzi scheme, the nature of which means it often takes some time for what is actually going on to become apparent.

I think it's also likely Mrs H would've told Santander she had a brochure from 'F' about the investment, which appeared entirely genuine.

All this suggests to me that it's more likely than not Mrs H would've proceeded with the transaction – even if Santander had alerted her to the risks involved and the checks she should make. I think it would've taken something more credible, like regulatory warnings, or anything in the public domain suggesting 'F' wasn't legitimate to have concerned Santander or made Mrs H pause and think more about her decision to invest.

I've also thought about Mrs H's point that she believes 'F' had an account with Santander prior to holding an account with a different bank at the time of the payment she made. She thinks that it's likely Santander ended its relationship with 'F' due to concerns it had that it was operating fraudulently, and that this is something it should've warned her about at the time. Mrs H would like the Financial Ombudsman to ask why Santander ceased providing an account to 'F'.

Information about the reasons for a customer no longer holding an account with a bank isn't something that would've been known or available to the person Mrs H would've been dealing with at the time of any intervention about her outgoing payment. So, even if Santander had taken a decision to close an account it held with 'F' (something I make no finding on), whatever the reasons for this, I don't think it is a reasonable expectation for Santander to have made that available to its frontline staff and to have shared information about its former customers with current customers wishing to make a payment.

Taking everything into account, I think any action from Santander is unlikely to have made a difference. So, I don't think it's fair or reasonable to hold Santander accountable for Mrs H's loss.

I'd still expect Santander to do all it could to try and recover the lost funds when Mrs H alerted it to the scam – even though the likelihood of recovery was slim given almost six years had passed. I can see Santander contacted the beneficiary bank as soon as it knew about Mrs H's loss. But had confirmation that no funds remained.

Santander acted promptly here to try and recover the lost funds and so I can't say it should've done anything more.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision **before 11 January 2024**.

Anna Jackson
Ombudsman

