

The complaint

Ms M complains that Santander UK Plc (“Santander”) won’t refund over £17,000 she says she lost to an investment scam.

The details of this complaint are well known to both parties, so I won’t repeat everything again here. Instead, I will focus on giving the reasons for my 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 agree with the conclusions reached by the investigator for the following reasons:

- The relevant regulations and industry guidance makes it clear that banks should fairly and reasonably be monitoring accounts in order to protect consumers from the risk of financial harm, including fraud and scams. But the expectation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that Santander could have declined the payments while concerns about the payee were discussed with Ms M.
- So, I would need to be satisfied that the merchant Ms M paid (“F”) was operating a scam when the disputed payments were made between September 2020 and January 2021 in order to expect Santander to have done anything further here. When determining this, I’ve borne in mind that certain high-risk investment traders (such as CFD merchants, which F appears to be) may use sales methods, or communication styles that can be seen to be unfair. Especially, when considering the financial losses incurred because of a disappointing return on an investment that’s been promoted. Even so, not all complaints to us involving CFD merchants are in fact a scam. While the ways and means of these businesses can be viewed as unreasonable or even unethical – that doesn’t necessarily mean they amount to the high legal threshold or burden of proof for fraud.
- I’ve consulted the official organisations that publish warnings about merchants that operate in the UK and abroad, including the Investor Alerts Portal of the International Organization of Securities Commissions (“IOSCO”), as well as the FCA’s own warning list. These watchlists, along with other reputable sources, lead me to believe that there were no warnings about F at the time these payments were made. The CFD trader is still operational and is also regulated by the Cyprus Securities and Exchange Commission (CySEC), which would be highly unusual if the merchant was operating a scam. Ms M’s representatives have also not provided any persuasive evidence to demonstrate how she was scammed either.
- So, overall I’m not persuaded that F can be said to have been fraudulent or operating a scam at the time in question. As a result, Santander wouldn’t have fairly and reasonably been expected to intervene. There was the inevitable risk of Ms M’s investments

returning a loss based on market performance. But Santander isn't required to protect its consumers from the risk of financial loss due to investment advice or bad bargains. Therefore, I don't consider the bank acted unfairly by failing to intervene in these payments.

- Even if I were to accept that the merchant was operating a scam at the time, I'm not persuaded the payments would have appeared overly unusual in any event. The amounts spent were not so large that they would be considered as out of character, for example. There was also no warning about F that should have reasonably led to Santander blocking the card payments automatically either, so I don't think it would've been required to intervene even if F was operating a scam.
- Given Ms M made the disputed payments via debit card, there is also the possibility that Santander could have sought to recover her funds via a chargeback claim. However, Ms M didn't dispute the transactions with Santander within the relevant time period allowed (120 days) by the scheme provider, so I don't consider it acted unreasonably by failing to pursue a claim in these circumstances. Even if Ms M was in time to raise a chargeback, I don't consider there would have been any reasonable prospect of such a claim succeeding in the circumstances of the investment the debit card payments were used to fund.

I appreciate this will likely come as a disappointment to Ms M. But overall, I'm not persuaded Santander can fairly or reasonably be held liable for the money she has lost.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 20 December 2023.

Jack Ferris
Ombudsman