

The complaint

Mr S is unhappy that Santander UK Plc hasn't reimbursed all the money he's lost to a scam.

What's happened?

Mr S has fallen victim to an investment scam.

He was contacted by a representative of a company I'll refer to as 'L' and offered attractive returns of 5.95% on a one-year bond ('the bond'). On 17 August 2021, Mr S paid £30,000 to a company I'll refer to as 'SM' via faster payment ('the payment'). L told Mr S that SM was a clearing agent.

Mr S subsequently discovered that L was a cloned company, impersonating a genuine company, and he had been scammed. He reported the matter to Santander.

Santander offered to share the responsibility for Mr S' loss with him. It said that neither party did enough to protect Mr S from financial harm.

Our investigator thought it was fair for Santander and Mr S to share liability in the circumstances, but Mr S didn't agree. So, his complaint was passed to me to decide.

My provisional decision

I issued my provisional decision on 22 November 2022. I'll set out my findings below.

Santander is a signatory of the Lending Standards Board's Contingent Reimbursement Model ('CRM Code'), which requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr S has fallen victim to, in all but a limited number of circumstances. Santander has argued that one of the exceptions applies in this case. It says that Mr S made the payment without a reasonable basis for belief that the payee was the person he was expecting to pay, the payment was for genuine goods or services and/or the person or business he was transacting with was legitimate.

From what I've seen, I'm satisfied that Mr S had a reasonable basis for belief in this case. I understand that Mr S was elderly when he made the payment, and he relied on the internet searches his relatives carried out on L for him. I don't think this is unreasonable in the circumstances. The internet searches did not show anything untoward because, of course, the scammer was impersonating a real company which is authorised and regulated by the Financial Conduct Authority ('FCA').

I've looked at the written communication between Mr S and L and I can see that the scammer corresponded in a professional, knowledgeable and convincing manner. Their emails often included an official looking company logo, and they set out that L is regulated by the FCA and protected by the Financial Services Compensation Scheme.

The scammer took Mr S through Know Your Customer checks, and he was asked to complete a client registration form and provide proof of identification and address. Afterwards, he was given a customer number to use in all future correspondence.

I don't consider that the bond's rate of return was too good to be true, or that it should've raised Mr S' suspicions. After making the payment, Mr S was given a certificate of investment that appears genuine, and he was provided with a copy of the relevant terms and conditions.

I appreciate that the payment was in favour of SM, but I can see that L told Mr S that SM was a clearing agent, and he says he didn't question this because he thought that L was a financial advisor. I think Mr S was given a plausible explanation for why he needed to pay SM and I can see why he accepted that explanation at face value. I don't think it was unreasonable for him to do so.

Overall, I'm persuaded that Mr S had a reasonable basis for belief on this occasion. He was the unfortunate victim of a sophisticated scam. I'm satisfied that he made some attempts to assure himself of the legitimacy of the investment opportunity, but those checks did not raise any red flags because of the scam's sophistication. The fraud was convincing, and the scammer took care to follow the processes a customer might expect to complete when investing, to come across as professional and credible, and to provide the documentation a customer might expect to receive. Of course, with the benefit of hindsight, there is more that Mr S could've done to protect himself. But I don't think it was unreasonable for him to proceed with the payment in the circumstances. And, even if he had carried out further checks, such as checking the FCA register, I don't think it's likely he would've realised anything was amiss because the FCA hadn't published any warnings about this particular scam by the time the payment was made. I can't ignore that Santander doesn't appear to have educated Mr S about the relevant scam type either, to raise his awareness about the types of checks he could do to protect himself from fraud.

The payment was high value and went to a new payee. Looking at Mr S' account statements in the months leading up to the scam, I consider that the payment was unusual and out of character. So, Santander ought to have identified an APP scam risk and given Mr S an effective warning under the CRM Code and/or intervened and asked Mr S some probing questions about the payment. The bank hasn't been able to provide any evidence that it did either, and Mr S says it didn't. As it seems most likely that Santander missed an opportunity to prevent the scam and Mr S' loss, and I'm persuaded that Mr S had a reasonable basis for belief when he made the payment, I'm satisfied that Santander can reasonably be held liable for Mr S' full loss.

I've provisionally decided that Santander should reimburse Mr S' full loss and pay 8% simple interest per annum from the date of the payment to the date of settlement.

Responses to my provisional decision

Both parties accepted my provisional 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 both Mr S and Santander have accepted my provisional decision, and neither party has provided any new information for me to consider, I see no reason to depart from the conclusions set out in my provisional decision.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint and instruct

Santander UK Plc to reimburse Mr S' full loss along with interest at 8% per annum from the date of the payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 January 2023.

Kyley Hanson
Ombudsman