

The complaint

Mrs V is unhappy that Santander UK Plc won't refund the money she lost to an investment which she now considers is a scam.

What happened

The full details of this complaint are well known to both parties, so I won't repeat them here. Instead, I'll recap the key points, and focus on giving reasons for my decision.

In March 2018, Mrs V received information or advice from an investment management firm (I will refer to as C) to invest money into an investment with an organisation - I will refer to as W. On 28 March 2018 Mrs V transferred £10,000 from her Santander account to C (a genuine and authorised company at the time) and then on from there into her investment with W.

Our investigator did not uphold the complaint. He didn't think any intervention by the bank would have made a difference in this case as W looked to be a genuine company at the time.

Mrs V did not accept the investigator's conclusions, so the case has been passed to me for a 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.

I have carefully noted the representations made Mrs V's representative, but I won't be addressing every single point that's been raised. No disrespect is intended, and it doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

In broad terms, the starting position at law is that a bank 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. So, although it wasn't her intention to pay money to the scammer, under the Payment Services Regulations 2017 (PSRs) and the terms of her account, Mrs V is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

I note W has gone into liquidation and there is an ongoing police investigation into the matter. So the outcome on whether or not this is a fraud or scam is not currently known. But

I don't need to make a finding on this to reach an overall outcome that I consider to be fair and reasonable in this particular case.

The investigator said the transaction might have been considered unusual based on the historic activity on Mrs V's account and I don't think that's an unreasonable conclusion to draw in this case. That said – even if Santander had intervened on the payment, I don't think it would have made a difference in this case broadly for the reasons the investigator previously outlined – which I have expanded on below.

Causation is a critical determination factor in every fraud case. I need to be satisfied that suitable intervention would have made a difference to Mrs V decision making or that Santander could have reasonably prevented the loss. In doing so I reach my decision on the balance of probabilities – so what I consider more likely than not based on the evidence and wider circumstances of the case.

If questions had been asked about the nature and purpose of the payment Mrs V was proposing to make, I think it's more likely than not that Mrs V would have explained she was transferring the money to C - a regulated and legitimate investment management firm at the time. I don't think this would have been particularly concerning to Santander. But if it had probed further it might have established that from there, Mrs V was investing in W - itself a UK registered company at the time.

Whilst I appreciate Mrs V might have researched things more – I don't think the 'investment' would have been cause for concern at the point of transfer or the events that have now transpired with W foreseeable. Mrs V was transferring £10,000 (via C) for an investment with an organisation (W) which appeared – through its registration with Companies House - to be legitimate. Records held with Companies House indicate W was a genuine limited company that was incorporated in September 2015 and was actively trading (with no suggestion of liquidation) at the time Mrs V sent her money to it. So, the payment didn't look like fraud or a scam and it would have needed a considerable amount of investigation to unearth the facts about W that have now come to light (and which even now seem inconclusive after a considerable amount of time). So, I don't think Santander ought reasonably to have cause for concern.

I'm sorry Mrs V has lost a considerable amount of money and I can understand why she would like to be compensated for her losses. But I'm only considering whether the bank should be held responsible for what happened, and I don't think it didn't anything wrong in allowing the transaction to be processed.

My final decision

My final decision is I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V to accept or reject my decision before 10 October 2023.

Kathryn Milne
Ombudsman