

## **The complaint**

Mr and Mrs R are unhappy that Santander UK Plc won't refund the money they lost to an investment which they now consider 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 November 2018, Mr and Mrs R received information or advice from a broker/IFA (I will refer to as A) to invest money into an investment - with an organisation I will refer to as W. On 29 November 2018, Mrs R sent a cheque for £20,000 from their Santander account to their investment with W. Mr and Mrs R received two interest payments back from W.

Our investigator did not uphold the complaint. He didn't think the payment was so unusual based on the account activity but, in any event, he didn't think intervention by the bank would have made a difference in this case as W looked to be a genuine company at the time. Mr and Mrs R 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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

I have carefully noted the representations made by Mr and Mrs R'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.

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.

A cheque is not considered a payment service under the previous or present Payment Service Regulations ("PSRs"), so the provisions of those regulations do not apply to this type of payment.

The starting position is that the bank is expected to process payments that a customer instructs it to make without undue delay. So, presented with a cheque drawn in accordance with the terms of the contract, a bank must honour the payment unless there are legal, regulatory or contractual grounds which may, in exceptional circumstances, allow refusal of a payment instruction.

At the time, Mrs R signed the cheque and intended to pay W believing it was a valid investment and there was no mistake made in the execution of the payment – Santander was complying with Mr and Mrs R's instruction. So, under the terms and conditions of the account, Mr and Mrs R are presumed liable for any loss in the first instance.

However, a bank may be in breach of its duty of care by not acting adequately or at all on information that would or should have triggered fraud alerts and systems required for the proper conduct of business.

I don't consider there to be a material difference between the reasonable, good-practice requirements on firms when processing cheques when it comes to monitoring accounts for the prevention of financial crime and having adequate systems and controls in place to prevent misappropriation of funds.

The investigator said the transaction wasn't unusual based on the historic activity on Mr and Mrs R's account. There had been some recent activity of similar large payments from the account and Mr and Mrs R had also received a large lump sum into the account - which I understand was from the sale of a property. Mr and Mrs R appear to have been making a number of investments on the back of this. Arguably prior to the deposit of the property funds – there hadn't been any large transactions like this. But even if Santander concluded the £20,000 cheque was unusual for the account and 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 Mr and Mrs R's 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 Mr and Mrs R was proposing to make, I think it's more likely than not that Mr and Mrs R would have explained they were investing in W - itself a UK registered company at the time and that this was based on the advice of A - another UK registered company.

Whilst I appreciate Mr and Mrs R 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. Mr and Mrs R was transferring £20,000 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 Mr and Mrs R sent her money to it. A was also a genuine limited company that was incorporated in March 2015. 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 Mr and Mrs R has lost a considerable amount of money and I can understand why they would like to be compensated for their losses. But I'm only considering whether the bank should be held responsible for what happened, and I don't think it did anything wrong in allowing the transaction to be processed.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 22 December 2023.

Kathryn Milne  
**Ombudsman**