

The complaint

Mr P and Mrs T have complained that Santander UK Plc won't refund the money they lost to an investment they now believe was 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 August 2018, Mr P and Mrs T received information or advice from an investment company (S) to invest money into a bond - with an organisation I will refer to as G. On 18 August 2018 Mr P and Mrs T made a transfer of £35,000 from their Santander account via a payment service provider (TM) then on to G.

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 G looked to be a genuine company at the time.

Mr P and Mrs T 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 by all the parties, 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, under the Payment Services Regulations 2017 (PSRs) and the terms of their account, Mr P and Mrs T 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.

Santander says this is a failed investment rather than a scam and claims there is an ongoing law enforcement investigation. I note G has been dissolved. I also note Mr P and Mrs T did receive a return from G into their account on 20 February 2019. However, it seems that the outcome to whether this is a scam or not is not currently known. But I don't need to wait for that outcome, nor do I need make a finding on this - to reach an overall outcome that I consider to be fair and reasonable in this particular case.

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 Mr P and Mrs T'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.

Mr P and Mrs T made the payment to TM - a firm regulated by the FCA as a provider of payment services. So, the payment was going to a legitimate destination. If questions had been asked about the nature and purpose of the payment Mr P and Mrs T were proposing to make, I think it's more likely than not that Mr P and Mrs T would have explained they were investing in G - itself a UK registered company and recommended by S - another genuine UK registered company.

Whilst I appreciate Mr P and Mrs T 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 G foreseeable. Mr P and Mrs T were making an investment with an organisation (G) which appeared – through its registration with Companies House - to be legitimate. Records held with Companies House indicate G was a genuine limited company that was incorporated in 2007 and was actively trading (with no suggestion of liquidation) at the time Mr P and Mrs T sent their 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 G 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 P and Mrs T have 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 here, and I don't think that it should.

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 Mr P and Mrs T to accept or reject my decision before 21 November 2023.

Kathryn Milne
Ombudsman

