

Complaint

Mr L is unhappy that Santander UK Plc hasn't reimbursed him after he fell victim to an investment scam.

Background

In 2017, Mr L was approached and invited to invest his money with a firm that I'll refer to as D. The details of this aren't entirely clear, but I understand he was promised a generous return on his investment of around 10% per year. He was persuaded to transfer £20,000 using his Santander account. Unfortunately, the company in question became insolvent at some point in 2020 and so Mr L didn't receive his money back when the investment ended.

In 2023, a law firm representing Mr L contacted Santander on his behalf. It complained that Santander hadn't done enough to protect him from fraud. It argued that this payment was unusual and out of character and that Santander ought to have carried out checks to guard against the risk that Mr L was falling victim to a scam.

Santander wrote to Mr L's representatives and said that they'd determined that the case was a civil dispute, rather than a scam, and that Mr L would need to contact the administrators of the insolvency company directly. Mr L's representatives disagreed with that conclusion and so referred a complaint to this service. It was looked at by an Investigator who didn't uphold it. She agreed that Santander ought to have been concerned about the £20,000 payment and contacted Mr L before processing it to ensure that he wasn't at risk of financial harm due to fraud. However, she noted that there were no concerns about the legitimacy of the investment fund back in 2017 and so it wouldn't have had any reasonable basis for treating the payment as potentially fraudulent.

Mr L's representatives disagreed with the Investigator's view. They argued that, if Santander had contacted Mr L, they'd have learned that he *"had been contacted in an unsolicited manner (via cold call), with regards to an unregulated, overseas property investment which was promising returns of 10%."* It also pointed out that the scheme Mr L was investing in was an Unregulated Collective Investment Scheme (UCIS). Such schemes are unregulated and there are restrictions in place that prohibit them being marketed to the typical retail customer. In its view, Santander should have been well versed in the risks posed by such schemes and warned Mr L accordingly.

Because Mr L disagreed with the Investigator's opinion, the complaint was passed to me to consider and come to a final decision.

Findings

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'm not upholding Mr L's complaint and I'll explain my reasons below. While I've considered all the evidence submitted by the parties, I've not necessarily commented on every argument raised. Mr L's representatives submitted a lengthy report authored by an

independent expert detailing their view of a broadly similar complaint and the relevant obligations that were applicable to Santander in 2017. Much of the content of that report is irrelevant since it relates to a different complaint. Nonetheless, I've fully considered the arguments that *are* relevant to Mr L's complaint.

I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome and to set out my reasoning. Instead, I'll focus on the crux of the complaint. Our rules allow me to do this and this simply reflects the informal nature of our service as a free alternative to the courts.

The starting point in law and under the relevant regulations is that Mr L is liable for any payment he's authorised. There's no dispute here that he authorised a payment of £20,000 to the company and so he's presumed liable for it at first instance. However, that isn't the end of the story. Good industry practice required that Santander be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

Santander initially argued that Mr L wasn't the victim of a scam, but of an unfortunate decision to invest in a company that failed. It recommended he contact the business responsible for distributing the assets of that company to its creditors. I can't know for certain if there was an intention to defraud at the point Mr L made his payment. The company in question is now the subject of criminal investigations which will ultimately determine criminal liability. Nonetheless, there is persuasive evidence that suggests this wasn't merely a legitimate investment that went wrong.

I also agree with Mr L's representatives that Santander ought to have queried the payment with him. It was out of keeping with the typical way he operated his account. It shouldn't have processed that payment without first making enquiries with Mr L to satisfy itself that he wasn't at risk of financial harm due to fraud. From the evidence I've seen, Santander didn't take such steps here. However, that doesn't automatically mean this complaint should be upheld. It isn't enough to identify that the bank ought to have intervened – I must be persuaded that its failure to intervene caused Mr L's loss.

Mr L's representatives have argued that this was a Ponzi scheme – in other words, that the investment group was paying out proceeds to existing investors by drawing on funds provided by newer ones. The problem is that none of that would've been apparent when Mr L made his investment in 2017. There was no negative information about the company online. It wasn't until later when the company became insolvent that the details about its operations started to become available. This isn't particularly surprising - by their very nature, Ponzi schemes don't tend to look like scams until the point that they fail.

I've taken into consideration the fact that this was a UCIS. Although such schemes aren't unlawful, their promotion is a regulated activity. I understand the person who promoted the scheme to Mr L wasn't regulated by the FCA for those purposes and that Mr L didn't meet any of the criteria of a person to whom promotion of such a scheme was permitted. However, even if Santander had queried the payment with Mr L, I'm not persuaded that it would be reasonable to expect an employee of the bank to identify that this was a UCIS in a short exploratory conversation. Even if the bank did make that connection, I don't think it could've framed any warning to him in such a way that it would've prevented him from making the payments.

I don't say any of this to downplay or diminish the fact that Mr L has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for him and the position he's found himself in. However, my role is limited to looking at the actions and inactions of the bank

and, while I agree that there was an error on Santander's part here, I'm satisfied it wasn't the cause of Mr L's loss and so I don't think it has done anything wrong in declining to reimburse him.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 February 2024.

James Kimmitt
Ombudsman