

The complaint

Mrs G and Mr G are unhappy that Santander has decided not to refund them after they were the victims of an Authorised Push Payment (APP) scam.

What happened

This complaint focuses on the initial investments payments Mr and Mrs G made between August and November 2019 totalling £133,000 with S. Mr and Mrs G issued four cheques for, £60,000, followed by two cheques of £20,000 and a further cheque for £33,000. They received returns on totalling approximately £88,000.

There are several companies involved in the complaint I'll set them out here:

- Mr and Mrs G invested with S. They say they were looking for a good interest rate or return and S was offering, a "*high yield bond, early redemption, government backed, secure investment, with FCA registered Trustees and assets of £34 million*".
- C was the bond administrator and ISA manager, and was an FCA regulated company with authorisation as an independent financial advisor. C went into administration in September 2020.
- A took receipt of the first payment for £60,000. The FCA announced in 01 July 2022 that A entered voluntary liquidation.

At the time Mr and Mrs G made their investments they had believed they had evidence of one of S's contracts. They found S had a professional and persuasive website. And the return on investment was a reasonable one, approximately 9% per annum.

Mr and Mrs G say they became suspicious when they had chase returns and noticed these were being paid by different companies and not by S directly. They decided to exit the investment after one year and S didn't fulfil the contract to return their outstanding invested funds, which they continued to chase.

Mr and Mrs G made further investments in 2021 and payments to cryptocurrency providers before bringing a scam claim to Santander in 2022 via a representative. Their claims included these payments to S.

Santander looked into the claim and said it was a civil dispute.

Unhappy with this outcome Mr and Mrs G brought their complaint to our service. Their representatives said that the payments were out of character and this ought to have raised concerns with Santander. They said although some cheques were issued to FCA authorised firms it would have been apparent, due their authorisation limits, that the funds wouldn't have remained with them.

It has recently come to the light that S was operating as a scam.

One of our investigators looked into things he didn't uphold the complaint. He said:

- Some cheque payments were made to FCA authorised firms, prior to liquidation. But they merely facilitated the transfer of funds.
- Cheques aren't covered by the CRM code and don't have some of the same protections in place that a card payment or bank transfer would otherwise have. But Santander still ought to have been on the look-out for unusual activity and made further enquiries with Mr and Mrs G when they issued these cheques, because of the high value and out of character nature of them.
- He didn't think Santander could have reasonably uncovered a potential scam at the time the payments were made. He went on to say that he didn't think any intervention here would have made a difference because:
 - o Mr G had carried out his own research and discovered S had links to FCA authorised companies.
 - o The payments would be facilitated by A and C which were FCA authorised.
 - o They received genuine looking bond certificates.
 - o The rate of return was not too high and therefore did not appear too good to be true.
 - o At the time there was no adverse information about S available in the public domain, to cause Santander or Mr and Mrs G, to think the investment wasn't legitimate.

Mr and Mrs G's representatives didn't agree with the investigators findings and asked for an ombudsman to review the complaint they said:

- Due to Mr and Mrs G's age and high value of the payments they agree that Santander ought to have considered the payments as unusual.
- Whilst the interest rate being offered was not suspiciously high it did exceed what high street banks were offering.
- If the payments had been queried and concerns expressed by Santander, surrounding the risk of the investment and it not being appropriate – bearing in mind their knowledge and experience – Mr and Mrs G would not have proceeded with the payments.

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.

Having done I have come to same conclusions as the investigator for largely the same reasons.

The Contingent Reimbursement Model (CRM) code does not apply here as the payments were made by cheque, which aren't covered by the code. But 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. Mr and Mrs G are 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.

When Santander considered the claim, it said this wasn't a scam and S was a legitimate company when Mr and Mrs G made their payments. However, it has now come to light that S was operating as a scam.

However, the decision I have to make, is not about what Santander ought to now know, with hindsight, but what was reasonable for it and indeed Mr and Mrs G to have known at the time they made the payments.

And I'm satisfied that if Santander had intervened with Mr and Mrs G's 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 G'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.

- The paperwork Mr and Mrs G received from S at the time quoted C as the bond administrator and ISA manager. And C was an FCA regulated firm. Within Mr and Mrs G's submissions, they show two of the four disputed cheques being paid directly to this FCA regulated firm.
- The first cheque was also paid directly to A – also an FCA regulated firm at the time.

If questions had been asked about the nature and purpose of the payment Mr and Mrs G were proposing to make, I think it's more likely than not, that they would have explained they were investing in S and payments were being made to FCA regulated firms. I don't think the returns would have seemed too good to be true. And that factor, along with the other information about the FCA regulated firms involvement, would have likely not left Santander with cause for concern that Mr and Mrs G were at risk.

Whilst other questions may have been asked, I think these factors add a lot of weight to the appearance of legitimacy. And checking if the investment company is FCA regulated would be one questions or warnings that a bank ought to give, when discussing the potential for investment scams. Even though S wasn't regulated itself, the involvement of C and A would have likely persuaded Santander, and Mr and Mrs G, that the investment wasn't likely to be a scam.

Whilst I appreciate Mr and Mrs G might have carried out more research if they'd discussed the investment with Santander, I don't think Mr and Mrs G would have had any cause for concern that the payments they were making weren't legitimate at the time. I'm not persuaded sufficient information was readily available at the time which would have caused Mr and Mrs G or Santander concerns.

Mr and Mrs G's representatives have said that Santander ought to have expressed concerns about the level of risk of the investment and whether that was appropriate for Mr and Mrs G, given their lack of experience. But banks aren't able to give investment advice. I'm satisfied that Santander could have given Mr and Mrs G a warning about dangers of falling victim to investment fraudsters but discussing the suitability of the investment and its risk would be beyond that. And so I don't think Santander ought to have expressed concerns in the way that Mr and Mrs G's representatives have set out.

In short, while I've carefully reviewed all of Mr and Mrs G's and his representatives' submissions, I don't find that significant concerns would (or could) have been readily

uncovered by either them or Santander at the relevant time. I can only reasonably expect any enquiries by Santander to have been proportionate to the perceived level of risk. All considered, I don't think it likely that Santander could have prevented this payment from being made, or otherwise caused Mr and Mrs G not to proceed.

Having carefully considered everything Mr and Mrs G and Santander have submitted, I don't find Santander could have reasonably prevented Mr and Mrs G's losses here. Neither do I find it materially at fault otherwise.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 28 April 2024.

Sophia Smith
Ombudsman