

The complaint

Mr and Mrs H complain that Santander UK Plc ('Santander') won't refund the money they lost when they say they fell victim to a scam.

What happened

What Mr and Mrs H say

Mr and Mrs H say that in early 2018 they were looking at potential investment opportunities and were contacted by a property company that introduced them to a company I'll call S in this decision. S offered the opportunity to invest in property and returns of between 12 and 18%. Mr and Mrs H decided to go ahead and on 16 May 2018 transferred £20,000 from their joint account to S.

In around 2019/20 Mr and Mrs H say a representative of S advised them that an American company was showing an interest in buying S and if they made a further investment, they were guaranteed to receive a premium. On 18 November 2020 they transferred a further £25,000 to S (from their joint account).

Mr and Mrs H instructed a professional representative who sent a letter of complaint to Santander in January 2024. They said that they are the victims of a sophisticated investment scam and Santander didn't do enough to protect them when they made unusual and out of character transactions. They said S was not a failed investment and they didn't have a civil dispute with S. Mr and Mrs H raised the following broad points:

- S was selling mini bonds to retail customers in contravention of FCA rules.
- Introducers were paid commission of 20-25% making the assurance of guaranteed returns ludicrous.
- By 2011 there was a wealth of information in the press about Ponzi schemes and in 2017 the FCA issued a warning about them.

What Santander says

Santander say Mr and Mrs H have a civil dispute with S and it isn't responsible for their loss. It suggested Mr and Mrs H contact S, administrators of S and the police.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said that at the time the payments were made it appeared S was a legitimate business which traded until it went into administration in December 2021. The fact the mini bonds weren't regulated by the FCA didn't mean S was operating a scam. The investigator also pointed out that it wasn't Santander's duty to give investment advice or to protect customers from bad bargains.

Mr and Mrs H didn't agree with the investigator's findings, so their complaint has been passed to me to decide. They say they are the victims of a sophisticated scam, and their loss could have been avoided if Santander provided a duty of care. Mr and Mrs H's response was lengthy so I have summarised what I consider to be their main points below:

- The investigator failed to take into account that Santander should have done more to

protect them based on FCA Principles of Business, Conduct of Business Sourcebook, proceeds of crime and anti-money laundering legislation, and PAS 17271: 2017. Mr and Mrs H also referred to warnings issued by the FCA in respect of investment fraud and Unregulated Collective Investment Schemes in particular.

- The investigator's stance that S seemed to be a legitimate company fails to take into account false assurances, guarantees and promises which were misleading and fraudulent.
- Santander should have completed additional checks and asked Mr and Mrs H questions about the payments. Had it done so, it would have been alerted to the fact the intended investment wasn't FCA regulated; the investment was promoted by an unregulated agent; Mr and Mrs H weren't high net worth or sophisticated investors, so the investment was inappropriately marketed; and the returns were high, and well above the Bank of England interest rate. They pointed out that the FCA has said high returns are a red flag.
- If Santander had acted appropriately Mr and Mrs H's losses could have been prevented. They were inexperienced investors and would have heeded advice from their bank.
- They were advised the investment offered guaranteed returns, and was low risk and safe, and S's marketing material also said the investment was low risk. This wasn't true and shows that a clear intention to defraud.
- The fact that the FCA called into question the methods used by introducers demonstrates S was not a legitimate business.
- The administrator's progress report identified a large number of transactions that warrant further investigation which brings into question S' business model and shows investors funds weren't necessarily used for investment.
- Mr and Mrs H referred to a social media post by a director of S in April 2022 which suggested investors should not cooperate with relevant authorities.
- Mr and Mrs H referred to multiple decisions published by this service which they believe support their position.

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.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

Whilst I have considered all points raised by Mr and Mrs H, I will not comment specifically on each one. I also cannot comment on other decisions issued by the Financial Ombudsman Service.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

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 Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Transaction one – 16 May 2018

This payment was made prior to the introduction of the Contingent Reimbursement Model Code (CRM Code) on 28 May 2019. The CRM Code can't be applied retrospectively, so it doesn't apply to this transaction.

Santander should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things) though. And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

I haven't been provided with Mr and Mrs H's account activity for the 12 month period before this transaction but consider it was likely to have been so unusual and out of character that Santander ought to have intervened and asked questions about the reason for the payment.

But I'm not persuaded that if Santander asked Mr and Mrs H the kind of questions I'd expect it to in May 2018, it would have had any concerns or that the payment would not have been made. H was a legitimate company that at the time the payment was made and was paying returns to other investors. Detailed documentation was provided and there was nothing in the public domain at the time to suggest Santander should have been concerned that Mr and Mrs H might be falling victim to a scam. The concerns Mr and Mrs H have raised have come to light after payments left Mr and Mrs H's account.

Santander ought to have asked Mr and Mrs H questions to understand the nature of the payment and to ensure they had researched the investment opportunity before committing funds. But it wasn't for Santander to analyse in detail the documentation provided to Mr and Mrs H or to provide investment advice.

Transaction two – 18 November 2020

Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Under this code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met.

I have considered whether Mr and Mrs H's claim falls within the scope of the CRM Code, which defines an APP scam as:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

It is for Mr and Mrs H to demonstrate that they are victims of an APP scam.

To decide whether Mr and Mrs H are the victims of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr and Mrs H thought this purpose was legitimate.
- The purpose the recipient (S) had in mind at the time of the payments, and whether this broadly aligned with what Mr and Mrs H understood to have been the purpose of the payment.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr and Mrs H thought they were investing in a property development company. I haven't seen anything to suggest that they didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H and any linked businesses. The key information to this case is:

- S completed three different development projects. S also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.
- Points raised by Mr and Mrs H are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring their claim within the scope of the CRM Code. For example, Mr and Mrs H have referred to the fact that administrators have said they need to look into various transactions made by H. But there is currently no evidence to show funds weren't used for the intended purpose. And a director of S could advise investors not to cooperate with relevant authorities for any number of reasons, including financial mismanagement.
- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects.
- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that S intended to use Mr and Mrs H's funds for a different purpose.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose S had in mind when it took Mr and Mrs H's payment was different to theirs. So, I consider Santander acted fairly in not considering Mr and Mrs H's complaint under the CRM Code.

If material new evidence comes to light at a later date Mr and Mrs H can ask Santander to reconsider their fraud claim in respect of the November 2020 transaction.

I'm aware Santander spoke to Mr and Mrs H before this payment was processed. Santander says that given the passage of time it no longer has a recording of this call for me to listen to and its notes don't cover what was asked and Mr or Mrs H's responses. But, based on what I have said about the first payment, I don't believe Santander ought reasonably to have had concerns based on what was known about S at the time the payment was made. Mr and Mrs H had already invested in H too. Whilst their representative hasn't mentioned returns received by Mr and Mrs H, it also seems likely they had received returns following their initial investment.

I'm really sorry to disappoint Mr and Mrs H, as I know they have lost a significant amount of money. But I'm not satisfied that I can fairly ask Santander to refund them based on the evidence that is currently available.

My final decision

For the reasons stated, I do not uphold this complaint.

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

Jay Hadfield
Ombudsman