

## The complaint

Mr T complains that Santander UK Plc ('Santander') won't refund the money he lost when he says he fell victim to a scam.

## What happened

Mr T says that he received marketing information from an introducer in respect of an investment opportunity with a company I'll refer to as H in my decision. H offered loan notes to investors to raise money for property development. Mr T was offered returns of 10% in year one, which rose by 2% a year for its duration. On 13 December 2018 Mr T made a £10,000 payment to H.

Mr T didn't receive any returns or his capital, and H went into administration in early 2022. Mr T says H was operating a scam and never intended to return his funds.

In October 2023 Mr T's representative sent a letter to Santander asking it to reimburse him. He said he was the victim of a scam and that Santander failed to identify he was at risk of fraud and to take appropriate steps to protect him when a high value payment was made.

Santander didn't agree to reimburse Mr T. It said he had a civil dispute with H and his payment was made before the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code') came into force.

Mr T was unhappy with Santander's response and brought a complaint to this service.

### *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. She said that although Santander should have intervened and discussed the out of character transaction it wouldn't have made a difference as it wouldn't have had any concerns.

Mr T didn't agree with the investigator's findings, so his complaint has been passed to me to decide. He says he is the victim of a sophisticated scam, and his loss could have been avoided if Santander provided a duty of care. Mr T's response was lengthy, so I have summarised what I consider to be his main points below:

- The investigator failed to take into account that Santander should have done more to protect him based on FCA Principles of Business, Conduct of Business Sourcebook, and PAS 17271: 2017. Mr T also referred to warnings issued by the FCA in respect of investment fraud and Unregulated Collective Investment Schemes (UCIS) in particular.
- Santander should have completed additional checks and asked Mr T 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 T wasn't a high net worth or sophisticated investor, so the investment was inappropriately marketed; and the returns were high, and well above the Bank of England interest rate. He pointed out that the FCA has said high returns are a red flag.
- If Santander had acted appropriately Mr T's losses could have been prevented. He was an inexperienced investor and would have heeded advice from his bank.

- H's business model entirely reflects that of a Ponzi scheme (the FCA definition of which was provided) and at least 25% of funds were used to pay introducers.
- Mr T was advised the investment offered guaranteed returns, and was low risk and safe, and H's marketing material also said the investment was low risk. This wasn't true and shows a clear intention to defraud.
- The administrator's progress report identified a large number of transactions that warrant further investigation which brings into question H's business model and shows investors' funds weren't necessarily used for investment. He said the sheer volume of transactions being investigated was an indicator of wrongdoing.
- Mr T referred to multiple decisions published by this service which he believes support his 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 T, 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.

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.

At the time the transaction was made, 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). 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.

Having considered Mr T's bank statements for the twelve months before the payment to H, I'm satisfied it was an unusual and out of character payment, so Santander should have intervened and asked Mr T some questions about it. It was to a new payee and the value significantly exceeded any previous payment.

I can't uphold Mr T's complaint solely on the basis that Santander ought reasonably to have intervened and there is no evidence that it did. I need to go on to consider causation – whether suitable intervention would have made a difference to Mr T's decision making or Santander could have reasonably prevented the loss. In deciding this, I need to consider the information that was available at the time the payment was made.

I'm not persuaded that if Santander asked Mr T the kind of questions I'd have expected it to, 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 was paying returns to other investors. Detailed documentation was provided via the introducer and there was nothing in the public domain at the time to suggest Santander should have been concerned that Mr T might be falling victim to a scam. Many of the concerns Mr T has raised have come to light after the payment left his account. And it wasn't for Santander to analyse in detail the documentation provided to Mr T or to provide investment advice.

I'm really sorry to disappoint Mr T, as I know he has lost a significant amount of money. But I'm not satisfied that I can fairly ask Santander to refund him.

### **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 Mr T to accept or reject my decision before 9 December 2024.

Jay Hadfield  
**Ombudsman**