

The complaint

Mr and Mrs G complain that Santander UK Plc will not refund the money they say they lost to a scam.

Mr and Mrs G are represented in this complaint by a solicitor, but for simplicity I will refer to Mr and Mrs G throughout this decision, even when referencing what their representatives have said on their behalf.

What happened

In late 2018 Mr and Mrs G were looking for investment opportunities. They came across a wealth management firm which introduced them to a company – which I'll call R – which offered investment opportunities associated with renewable energy. Mr and Mrs G felt the investment looked good, although they could see that it was high risk, and so in November 2018 they invested £100,000 in R. This was a CHAPS payment from their Santander account, which they initiated in branch. They were expecting to receive interest payments from May 2019 onwards, and to then be able to also withdraw their capital in 2022.

In January 2019 Mr and Mrs G then decided to invest in another scheme that the wealth manager had told them about, which I'll call M. Mr and Mrs G made a payment for £10,000 to M, via telephone banking. They expected to receive interest payments from January 2020 and again the bond was expected to mature in 2022.

Ultimately though Mr and Mrs G received only one interest payment from their investments, in May 2019, and both R and M subsequently went into liquidation, meaning Mr and Mrs G lost the majority of the funds they had invested.

Mr and Mrs G began to believe that they may have been the victims of a scam perpetrated by R and M, and so in late 2023 they raised their concerns with Santander.

Santander looked into their concerns, but did not agree it was liable for their loss. It said that the payments were not covered by the Lending Standards Board's Contingent Reimbursement Model Code (the Code). It also noted that it believed these were legitimate investments which had failed, and not scams.

Mr and Mrs G were unhappy with Santander's response so they referred their complaint to our service. One of our Investigators looked into what had happened, but they did not feel that it was fair to hold Santander responsible for Mr and Mrs G's loss. They agreed that neither of the payments Mr and Mrs G made was covered by the Code and explained that they felt any intervention from Santander would not have been likely to prevent Mr and Mrs G from making these payments, given that R and M appeared to be legitimate investments and there was no clear evidence to show that they were scams or to give Santander or Mr and Mrs G any cause for concern about the investments at that time.

Mr and Mrs G remained unhappy, they maintain that they were the victims of scams. As no agreement could be reached, this case has now been passed to me for review.

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 in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. Where the evidence is incomplete or missing, I am required to make my findings based on a balance of probabilities – in other words what I consider is most likely given the information available to me.

I am extremely sorry to hear about the situation Mr and Mrs G are now in, following the failure of R and M, and I don't doubt the impact this has had on them. I acknowledge that they have sustained a significant financial loss, and that they invested into R and M sincerely believing they were legitimate investments but now have concerns that R and M were operating fraudulently. However, I do not have the power to consider the actions of R and M. The complaint I am limited to deciding is the one Mr and Mrs G bring against their bank, Santander. That means I must focus on whether I consider Santander was at fault in the way it handled the payments Mr and Mrs G made to R and M from their account - and if so, what difference I think that fault likely made.

I've first considered whether the CRM code applies to the payments Mr and Mrs G made.

The Lending Standards Board Contingent Reimbursement Model Code (the Code) is a voluntary code which sets out a number of circumstances in which firms are required to reimburse customers who have been the victims of certain types of scam. Santander is a signatory to the Code. But the Code only came into effect in May 2019, and it is not retrospective. The payments Mr and Mrs G made to R and M were made before this date, so the Code does not apply here.

The starting position in law is therefore that Mr and Mrs G are responsible for transactions they have carried out. There does not appear to be any dispute that Mr and Mrs G gave the payment instructions. So, Santander's primary obligation here was to carry out their instructions without delay.

However, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I'd expect Santander to have been on the lookout for out of character or unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud or scam. In circumstances where such concerns arose, I'd expect the bank, as a matter of good industry practice, to have intervened to a proportionate extent prior to processing the payment instruction to reassure itself the payment wasn't likely part of a scam or fraud.

Here, Santander says it did discuss the £100,000 payment with Mr and Mrs G, as that payment was made in branch. We don't know exactly what was discussed at that time, although Santander has said its branch process included questions relevant to scams. The £10,000 payment was made on the phone, so it seems possible there was also some discussion about it, but again we do not know exactly what was discussed at that time. But regardless of exactly what was said, at the time of either payment, I do not think it is likely that *any* intervention, no matter how detailed, would have prevented Mr and Mrs G's eventual loss.

I say this because I can't rely on the benefit of hindsight here – I must consider what Santander could reasonably have established in the course of proportionate enquiry to Mr

and Mrs G about these payments back in late 2018 and early 2019. While Mr and Mrs G now have concerns about the legitimacy of R and M's business, and both businesses have since entered liquidation, I don't think it would've been readily apparent in 2018 or 2019 that R and M might be fraudulent rather than simply potentially risky investments. I'm not persuaded any information was readily and publicly available at the time which would have caused Santander (or Mr and Mrs G) specific concerns about the risk of loss through fraud. Mr and Mrs G had received professional and legitimate looking documentation, and there was nothing that suggested at the time that R and M were anything other than legitimate companies offering an investment. In fact, I would go as far as to say that there is still no clear evidence to show that either R or M was acting fraudulently.

So, given that I don't find that significant concerns would (or could) have been uncovered by Santander's proportionate enquiries at the time, I don't think it likely that Santander could have prevented these payments from being made, or otherwise caused Mr and Mrs G not to proceed.

Finally, given that it was many years after the payments were made that Mr and Mrs G reported their concerns to Santander, I cannot see that there would have been any reasonable prospect of it recovering those funds. So, I don't think Santander could have done any more to recover Mr and Mrs G's lost funds.

I sympathise with the position Mr and Mrs G have found themselves in, and I'm in no way saying that they don't have a legitimate grievance against R and M. But, for the reasons I've explained above, I do not consider that the payments in dispute here are covered under the Code, or that it would otherwise be fair to hold Santander responsible for the money they have lost.

My final decision

I do not 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 27 March 2025.

Sophie Mitchell
Ombudsman