

The complaint

Mrs C complains that Santander UK Plc didn't do enough to protect her when she made a payment to a property investment opportunity she now considers was a scam.

What happened

Mrs C made a £10,000 payment from her Santander account towards a property development investment with 'H' in January 2020. Mrs C now says the investment was a scam and Santander should've done more to protect her at the time she invested.

Santander didn't uphold Mrs C's complaint and said this was a civil dispute between her and H. Mrs C came to our service, but our investigator also didn't uphold her complaint for the same reasons, saying there wasn't evidence she had been scammed. Mrs C, via a representative, asked for a final decision.

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 broad terms, the starting position at law is that a business 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.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's Contingent Reimbursement Model ('the CRM code'), which Santander has signed up to.

The CRM code doesn't apply to all APP payments which ultimately result in a loss for the customer. It only covers situations where the payment meets its definition of an APP scam. The relevant definition for this case would be that Mrs C transferred funds to another person for what she believed was legitimate purposes, but which were in fact fraudulent.

I've considered the evidence available, but I can't fairly conclude that Mrs C's been the victim of a scam in line with this required definition. This means the CRM code doesn't apply to her payment and so Santander isn't required to reimburse her under it.

Our investigator covered in detail why they considered the payment purpose Mrs C had in mind, and the purpose in which the recipient had matched. Based on the evidence we hold,

I'm in agreement with them that this was the case, I'll explain why.

It's accepted Mrs C's purpose for making the payment was to invest it in H and for the funds to be used towards property development. And Mrs C was persuaded this was a legitimate venture, having previously invested. I accept that H failed to deliver what was expected from the investment, but I haven't seen any clear evidence this was always what it intended; or that at the time of the payment, it planned to use her funds in a different way to what was agreed. I haven't seen persuasive evidence that H's intention was to defraud Mrs C when it took her funds.

The information we currently hold suggests that H was a failed investment venture, not a scam. The information provided doesn't evidence H had fraudulent intent when it took Mrs C's funds, as required under the definitions within the CRM code. So I can't agree Santander was wrong to consider Mrs C's situation a civil matter and so not reimburse her under the CRM code, or to not consider a refund more generally within the expectations on a firm to act to protect customers who may be at risk from financial harm.

I appreciate Mrs C is now in a position where she's lost out financially due to this investment. But I don't consider her loss is the result of any failings by Santander.

My final decision

For the reasons set out above, I don't uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 31 December 2024.

Amy Osborne
Ombudsman