

The complaint

Mr R complains that Santander UK Plc didn't do enough to protect him when he made payments to two separate property investment opportunities he now considers were scams.

What happened

Mr R made two payments from his Santander account towards a property development investment with 'H', one in April 2018 and another in November 2019. Separately, he made two payments in November 2018 towards a different investment relating to property development with company 'B'. Mr R now says both investments were scams and Santander should've done more to protect him at the time he invested.

Santander didn't uphold Mr R's complaint and said this was a dispute between Mr R and the companies he paid. Mr R came to our service, but our investigator also didn't uphold his complaint for the same reasons, saying there wasn't evidence Mr R had been scammed. Mr R, via a representative, asked for a final decision but didn't give any reasons why he disagreed with the assessment.

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.

I've considered longstanding regulatory expectations and requirements, and what I consider to be good industry practice for firms when processing payments. In line with this, Santander ought to have been on the look-out for the possibility of fraud and made additional checks before processing payments in some circumstances.

Mr R's first payments toward his investment with H was for £20,000 and then the other three payments, one for H and two for B, were all for £10,000. Due to the time passed we don't have full details of what did happen at the time of the payments, but we have seen that Santander did intervene to a degree on the payments complained about. I can also see it did ask Mr R for more information on two of the payments.

Given their values and Mr R's account usage, I consider Santander ought to have asked some questions about the purposes of the payments to understand better what Mr R was doing. While it did have some conversations, I don't know if these covered everything I'd have expected. However I don't consider that proportionate conversations would've changed Mr R's decision to invest.

I'm not persuaded the kind of information I'd expect Santander to have shared/discussed with Mr R would've prevented the payments from being made. Both H and B were legitimately registered companies at the time Mr R paid into them and Santander wouldn't have been aware what would later happen with regards to Mr R's losses.

Mr R has provided us with some of the promotional literature for the investment with H. It's persuasive and comprehensive information for investors which sets out how it operates, and the returns expected. It seems highly unlikely that a conversation with Santander would've prevented Mr R going ahead with the investment when he held this information. And there also wasn't anything obviously concerning about H available at the time of the payment. I haven't seen information that indicates Santander ought to have stopped the payments to H or B at the time Mr R was making them, or that anything it shared would've prevented him from going ahead.

I've then considered whether Mr R is due a refund under the Contingent Reimbursement Model (CRM) code for the payment to H in November 2019, the only payment Mr R made once this code was in force. As his representatives argue he was scammed by H, this could apply.

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 Mr R transferred funds to another person for what he believed was legitimate purposes, but which were in fact fraudulent.

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

Our investigator covered in detail why they considered the payment purpose Mr R had in mind, and the purpose in which the recipient had matched. I'm in agreement with them that this was the case, I'll explain why.

It's accepted Mr R's purpose for making the payment was to invest it in H and for the funds to be used towards property development. And that he was persuaded at the time through the paperwork this was a legitimate venture. 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 Mr R's funds in a different way to what was agreed. I haven't seen persuasive evidence that H's intention was to defraud Mr R when it took his 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 Mr R's funds, as required under the definitions within the CRM code. So I can't agree Santander was wrong to consider Mr R's situation a civil matter and not reimburse under the CRM code at this time.

I appreciate Mr R is now in a position where he's lost out financially due to these investments. But I don't consider his loss is the result of any failings by Santander.

My final decision

For the reasons set out above, I don't uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 December 2024.

Amy Osborne
Ombudsman