

## **The complaint**

Mrs R complains that Santander UK Plc ('Santander') won't reimburse the money she lost when she says she fell victim to a scam.

## **What happened**

Mrs R says that she was introduced to an investment opportunity with a company I'll call H in this decision. H was involved in property development. In September 2018 Mrs R made three payments of £500, £4,500 and £5,000 for loan notes. She expected to receive regular income payments and the return of her capital at the end of the term.

Mrs R didn't receive the returns she expected, and H went into administration in January 2022. Mrs R believes the investment wasn't genuine and that she is the victim of a sophisticated scam.

Mrs R complained to Santander in August 2023 and said it failed to comply with PAS 17271:2017 (the PAS Code) and FCA Principle 6. She said Santander should have intervened and asked her questions about the reason for the payment. At the same time, Mrs R said Santander should have asked to see correspondence with H and considered the delay in H filing accounts. Mrs R also set out why she thought H was operating a scam. In particular, Mrs R referred to high commissions of 35% paid to introducers and to high interest rates of up to 18%.

Mrs R asked Santander to refund her loss in full, pay 8% interest on this amount, and £1,000 compensation for the poor service it provided.

Santander didn't agree to reimburse Mrs R. It said she had a civil dispute with H which isn't covered by the CRM Code.

Mrs R 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. He said there was insufficient evidence to conclude H operated a scam and explained why.

Mrs R didn't agree with the investigator's findings and asked for a review by an ombudsman, so her complaint was passed to me to decide. She provided a lot of documentation from H including promotional material, agreements, and updates, and asked me to review the following points:

- The investigator applied the wrong threshold test for intervention by HSBC when considering the application of the PAS Code. The threshold test is identification of a risk of harm rather than identifying an actual fraudulent transaction. Mrs R made high value payments that were out of character so HSBC should have recognised a scam risk.
- The investigator failed to give adequate weight to elements of the evidence concerning H, the nature of the investment it offered and the likelihood it offered a Ponzi or other fraudulent scheme. There was a clear risk of an APP scam and/or financial harm as Mrs R made a significant payment to a new payee.

- Administrators for H haven't offered any conclusions on the inter group transactions that are being investigated and certainly haven't concluded there was nothing irregular going on.
- Santander should reimburse Mrs R based on her vulnerability given her age and the fact she was an inexperienced investor.
- The loss has had a devastating impact on her.

I intended to reach the same outcome as the investigator but to provide additional reasoning, so I issued a provisional decision on 20 January 2025. In the "What I've provisionally decided – and why" section of my provisional decision I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*All the payments were 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 these transactions.*

*In broad terms, the starting position at law is that a financial institution such as Santander is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.*

*Taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), HSBC 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 can't determine if the transactions were out of character as Santander has only provided evidence of transactions from 2 September 2018. Santander should provide account activity for the 12 month period before the payment to H in response to this provisional decision.*

*Even if the transactions were unusual, I can't fairly require Santander to reimburse Mrs R solely on the basis it didn't intervene (if that is the case). I need to go on to consider what is most likely to have happened if Santander had asked the kind of questions I think it should have at the time the payments were made. In deciding this point, I need to consider what was known about H at the time, rather than information that has subsequently come to light.*

*I'm not persuaded that Santander would have had any concerns or that the payments would not have been made if it had intervened. H was a legitimate company that at the time the payments were made 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 Mrs R might be falling victim to a scam. Many of the concerns Mrs R has raised, including high commissions paid to introducers, have come to light after the payment left Mrs R's account.*

*Santander ought to have asked Mrs R questions to understand the nature of the payments and to ensure she had researched the investment opportunity before committing funds. But it wasn't for Santander to analyse in detail the documentation provided to Mrs R or to provide investment advice. And I wouldn't expect Santander to look up H's filing history as Mrs R's representative has suggested. I'm not persuaded that the 2014 chat forum message provided by Mrs R about a pension scheme associated with H looking too good to be true means Santander should have had concerns.*

*I'm unable to ask Santander to reimburse Mrs R on the basis that she was vulnerable at the time the payment was made. When the CRM Code applies a customer can be reimbursed if*

*they are vulnerable even when an exception to reimbursement applies. But that's not the case here.*

*Mrs R has asked Santander to pay £1,000 to compensate her for the poor service she received. Mrs R hasn't set out why she thinks the service was poor. I can't see any justification for such an award but will consider any further detail provided in response to this provisional decision.*

*Overall, whilst I'm very sorry to hear about Mrs R's loss, I can't reasonably ask Santander to reimburse her.*

#### Responses to my provisional decision

Santander let me know that it agreed with my provisional decision. Mrs R 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.

As neither party has raised any new points or evidence for me to consider my final decision is the same as my provisional decision (which I have set out above).

In summary, even if the payments Mrs R made were unusual, I don't consider that intervention by Santander would have made a difference in this case given the information that was available about H at the time. And I can't see that the service Santander provided to Mrs R was poor so I am not awarding any compensation.

#### **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 R to accept or reject my decision before 5 March 2025.

Jay Hadfield  
**Ombudsman**