

The complaint

Mr C has complained that Santander UK Plc (“Santander”) hasn’t refunded the money he invested in a company, which I’ll call “H”, that he says he later found out to be a scam.

What happened

The background of this complaint is already known to both parties, so I won’t repeat all of it here. But I’ll summarise the key points and then focus on explaining the reason for my decision.

Mr C has used a professional representative to refer his complaint to this service. For the purposes of my decision, I’ll refer directly to Mr C, but I’d like to reassure Mr C and his representative that I’ve considered everything both parties have said.

Mr C has explained that in 2018 he was actively looking for investment opportunities and the opportunity to invest in H was recommended to him by an independent financial advisor.

Between November 2018 and January 2019 Mr C made three payments totalling £101,765.05 to invest in three separate loan note investment schemes. He agreed to the investments on the understanding that after 36 months he’d be guaranteed to receive shares equivalent to the value he’d invested. In the meantime his investments would be held as capital-only, attracting an interest rate of between 12% and 15% per year. Mr C received documentation, such as emails and loan notes, in relation to the investment and he has supplied these as part of his complaint.

In December 2021 H went into administration. When Mr C discovered he wasn’t able to withdraw any of the money he’d invested, and hadn’t received any returns on his investment, he contacted his representative who reported a scam to Santander on Mr C’s behalf. Santander said this was a dispute between Mr C and the party he company the funds to, as opposed to a scam. So Mr C made a complaint to Santander.

In his complaint Mr C said that Santander failed to meet the standards expected by not monitoring his account or warning him about the risks involved with fraud and scams when he made the payments to H. He requested Santander reimburse him for his losses, plus 8% interest and £1,000 compensation for poor service. In its final response letter it said the funds had been sent before the Lending Standards Board’s Contingent Reimbursement Model (CRM) was introduced, so it wasn’t responsible for refunding anything.

Mr C remained unhappy so he referred the complaint to this service.

Our investigator considered everything and didn’t think the complaint should be upheld. She explained she didn’t think a better intervention would’ve uncovered that Mr C was falling victim to a scam, so she didn’t think Santander could’ve prevented Mr C from losing the money that he did.

As Mr C didn’t accept the investigator’s opinion, the case has been passed to me to make a 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.

I'm sorry to disappoint Mr C but having considered everything I'm afraid I'm not upholding his complaint, broadly for the same reasons as our investigator, which I've set out below.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And in this case it's not in question whether Mr C authorised these payments from leaving his account. It's accepted by all parties that Mr C gave the instructions to Santander and Santander made the payments in line with those instructions, and in line with the terms and conditions of Mr C's account.

All of the payments Mr C made were done in one of Santander's branches. Whilst Santander's notes show it asked Mr C for identification to authorise the payments, they don't give much other information about what happened at the time, such as the purpose of the payments or any other questions Mr C was asked, or any warnings he was given. But I think it's likely that's because they were made over five years ago – when scams weren't so prominent.

Despite the lack of information available about the payments, I'm not holding Santander responsible for the money Mr C has unfortunately lost. The reason I say this is because I'm not persuaded that an intervention by Santander would've made a difference in this case.

I say this because I'm satisfied that at the time the payments were made, there was nothing to suggest that H wasn't a legitimate company, and I'm not persuaded that Santander would've uncovered that the investment opportunities Mr C sent payments to take part in were fraudulent. All of the information I've seen suggests that H was a property development company that completed some ambitious construction projects, but that it unfortunately wasn't able to continue due to financial issues. To conclude that Mr C had been scammed I'd need to think that H had intentionally set out to take Mr C's money with no intention of repaying it, nor giving him the returns he'd been promised. But I think it's unlikely H would've gone to the extent of investing in the large construction projects that it did, which would've taken a lot of time and money, to carry out a scam.

With this in mind, even if Santander had intervened more robustly before Mr C made the payments, for example by delaying them or blocking them to ask Mr C further questions, I don't think this would've made a difference in this case. I say this because it's more likely than not that any questioning would've ultimately led to the payments being made, as both Santander and Mr C would've been satisfied that Mr C was investing in a legitimate scheme and wasn't therefore at risk of financial harm through fraud or a scam.

Recovery of the funds

As Santander didn't conclude that Mr C had been scammed out of the money he invested, it didn't have the power to attempt to recover the funds from the recipient's account.

Given what I've said above, I'm satisfied that this is reasonable in the circumstances.

Whilst I understand Mr C has lost a significant sum of money as a result of what's happened, and it's not his fault, it doesn't automatically follow that Santander should be held liable for it.

I do understand that my decision will be disappointing, but for the reasons I've set out above, I don't hold Santander responsible Mr C's loss.

My final decision

I don't uphold Mr C's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 November 2024.

Sam Wade
Ombudsman