

The complaint

Mr M complains that Santander UK Plc won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In mid-2017, Mr M was looking for an investment online and came across an investment company offering investments in renewable energy. He spoke with the company about the investment available and then made a number of payments from accounts he held with several banks to invest with it.

I've set out the payments Mr M made to the investment company from his Santander account below:

Date	Amount
5 September 2017	£15,000
13 April 2018	£20,000
13 April 2018	£20,000
16 April 2018	£20,000

Unfortunately, Mr M didn't receive the returns he was told he would from his investments and the investment company went into administration in December 2022. Mr M then reported the payments he had made to Santander as a scam and asked it to refund the money he had lost.

Santander investigated but said it felt this was a civil dispute between Mr M and the investment company, rather than a scam. So it didn't agree to refund the payments Mr M had made. Mr M wasn't satisfied with Santander's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the available evidence demonstrated that the company had set out to deliberately scam investors. So they didn't think Santander should have to refund the money Mr M had lost. Mr M disagreed with our investigator, so the complaint has been passed to me.

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 firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer 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 customer even though they authorised the payment.

There are certain activities banks are expected to carry out to try to protect their customers from falling victim to scams, and certain protections in place for customers who do fall victim to scams. But, before looking at whether HSBC has done what we'd expect it to do or whether these protections apply, I must first be satisfied that Mr B has been the victim of a scam.

The relevant test for whether someone has been the victim of a scam comes from the FCA handbook. This defines a scam as where a customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

So in order to determine whether Mr M has been the victim of a scam, I need to consider whether the purpose he intended for the payments was legitimate, whether the purposes he and the investment company intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what he's told us, I'm satisfied Mr M made the payments here with the intention of investing with the investment company. He thought his funds would be used to fund a renewable energy scheme the company was carrying out, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr M didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the investment company intended a different purpose for the payments, or that Mr M's and the company's purposes for the payments weren't broadly aligned.

From what I've seen, it appears the investment company did intend to put investors' money towards a renewable energy scheme. A report from the administrators of the company said that the company's research into more environmental ways of dealing with household waste had developed as intended, and that plant and machinery had been installed at the company's trading premises.

The report also said the company had assets valued at around £250,000 and that the director of the company had agreed to purchase these assets and aimed to refund investors via their new company.

I wouldn't expect a company that always intended to scam investors to have carried out this research, installed this machinery, or had this amount of assets. So I think this strongly suggests the investment company was attempting to operate as a legitimate business.

The investment company was registered on the government's register of limited companies, and had filed accounts for a number of years before it entered administration – which I wouldn't necessarily expect of a company operating a scam.

I've also not seen anything from the administrators of the investment company which suggests it was operating a scam. In fact, the administrator's report suggests the failure of the company followed trading restrictions imposed by the Covid pandemic and the unexpected resignation of a director. And I haven't been provided with evidence of any investigation by an external organisation which concludes that the company was operating a scam.

So I'm not persuaded that the available evidence is sufficient to safely conclude that the purpose the investment company intended for these payments was different than the purpose Mr M intended. And so I don't think the circumstances here meet the definition of a scam, or that Santander has acted unreasonably in not agreeing to refund the money Mr M lost from these payments as a result.

In any event, even if I was satisfied the company had set out with the intention of scamming Mr M, I'm not satisfied anything I would reasonably have expected Santander to have done when the payments were made would have prevented Mr M's loss. Even if Santander had identified a risk when Mr M was making the payments and contacted him about it, I don't think anything about the circumstances of the payments or the company at the time would have caused it significant concern. And so I don't think anything I would reasonably have expected it to have done at that time would have prevented Mr M making the payment.

I sympathise with the position Mr M has found himself in. I appreciate that my decision will come as a disappointment to him and I'm in no way saying he did anything wrong or that he doesn't have a legitimate grievance against the investment company. But I can only look at Santander's responsibilities and, for the reasons I've explained above, I don't think it would be fair to require Santander to refund the payments he made here.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 April 2025.

Alan Millward
Ombudsman