

The complaint

Mrs C complains that Santander UK Plc will not refund the money she says she lost to two investment scams.

Mrs C is represented by a solicitor. But for simplicity I will refer to Mrs C throughout this decision, even when referencing what her solicitors have said on her behalf.

What happened

Mrs C was looking for investment opportunities. She came across an investment opportunity with a company which I'll call 'B' which promised returns of 8.9%. The investment was in bonds relating to property development and real estate. In March 2017 Mrs C made a payment of £10,000 from her Santander account to B's accountant. She received returns on this investment until August 2019. B went into administration in April 2020.

In 2019 Mrs C was looking for more investment opportunities, and was introduced to a company I'll call 'HS'. HS had several different building projects they were providing investments for in the form of loan notes. Mrs C agreed to invest in two specific building projects, and over the next 15 months made payments to HS totalling £147,875. Mrs C did not receive any returns on her investment. Eventually, following significant delays, issues with income and repaying investors, HS went into administration in December 2021.

Mrs C felt she had been the victim of investment scams and that B and HS had set out to defraud her.

She raised a scam claim with Santander which said that it considered that what had happened was a civil dispute between Mrs C and B and HS, so it did not agree to refund any of her loss. Mrs C disagreed, as a result, she referred the complaint to our service.

Our Investigator looked into the complaint. They noted that the payment to B was not covered by the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. And, in any case, they did not consider that Santander would have been able to prevent Mrs C from making that payment at the time. The Investigator did consider the payments to HS under the Code. And having done so, they felt it was more likely a civil dispute between Mrs C and HS. On balance, they felt it was more likely this was an investment that failed, so they didn't agree Santander needed to refund Mrs C.

Mrs C disagreed with the Investigator's findings. As an informal agreement could not be reached the complaint has been passed to me 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.

It isn't in dispute that Mrs C authorised the payments in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she is liable for the

transactions that are in dispute here. But she says that she has been the victim of two authorised push payment (APP) scams.

Santander has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the first payment that Mrs C is complaining about, the payment to B in March 2017, was made prior to the Code coming into force. So, in the circumstances of this complaint the Code does not apply to that payment.

Because of this, Mrs C is not automatically entitled to a refund of that payment. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether Santander acted fairly and reasonably in its dealings with Mrs C regarding the payment to B, or whether it should have done more than it did.

Given the size of the payment, I think it's reasonable to conclude that Santander should have intervened in some way – either via a written warning or direct contact with Mrs C – before allowing the payment to be made. The question then is whether any such intervention would have been likely to prevent Mrs C from making the payment and therefore could have prevented her loss.

Had Santander contacted Mrs C when she made this payment, I've thought about what it might reasonably have asked her, and what answers Mrs C would've likely provided to determine if it ought to have reason to conclude Mrs C was falling victim to a scam.

But I want to be clear, the bank's primary obligation here was to carry out its customers' instructions without delay. It wasn't to concern itself with the wisdom of the customers' payment decision. In particular, Santander didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in B wasn't an investment the bank was recommending or even endorsing. The bank's role here was to make the payment that Mrs C had told it to make. Mrs C had already decided on that investment.

Santander couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mrs C's circumstances, investment needs and financial goals. And taking such steps to assess suitability would have gone far beyond the scope of what I could reasonably expect of Santander in any proportionate response to a correctly authorised payment instruction from its customers. That said, I think it would have been proportionate here for the bank, as a matter of good industry practice, to have taken steps to establish more information about this payment. What matters here is what those steps might be expected to have uncovered at the time.

So, I would need to be satisfied that there were concerns that B was operating a scam when Mrs C made the payment from her Santander account in 2017 in order to expect Santander to have done anything further here. But at the time Mrs C made her payment, B was or at least appeared to be a legitimate property developer offering fixed rate bonds. I appreciate it later filed for bankruptcy in 2020 and there have been concerns about the sales tactics employed by B and its agents, but that does not mean that Santander should have identified

it as a scam at the time. I have not seen anything to show that there was publicly available information, at the time and relating to B, which suggested that B was a scam or fraudulent.

So, overall, I'm not persuaded that there was any reason for Santander to have considered that B was fraudulent or operating a scam at the time of the payments. So had it intervened I don't think that Santander would have identified any issues with the payment and therefore I don't think that the payment would have been stopped.

I note Miss B's representative has mentioned that the type of investment should have caused concerns but as stated above, Santander is not obligated to involve itself in providing investment advice. I accept that unregulated collective investment scheme (UCIS) can sometimes be scams, but not all are, so unless there were some other warnings about B I don't think Santander should reasonably have prevented the payments simply because they were being sent to a UCIS.

So, I don't consider there to be any basis in which Santander can fairly or reasonably be held liable for Mrs C's loss relating to the payment to B.

Turning to Mrs C's payments to HS, the CRM Code would only apply to these payments if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code below:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

I've therefore considered whether the payments Mrs C made to HS fall under the scope of an APP scam as set out above. Having done so, I don't think that they do. I'll explain why in more detail.

In order to determine if Mrs C has been the victim of a scam, I have to consider if her intended purpose for the payments to HS was legitimate, whether the intended purposes she and HS had in mind were broadly aligned and, if not, whether this was the result of dishonest deception on the part of HS.

Based on the evidence available to me, it appears Mrs C was intending for the funds to be invested in two specific building projects. She then expected to receive returns on the maturity of her investment of 12%. The paperwork she received prior to investing appeared to be professional and detailed, and I can see HS was on Companies House and had been incorporated since 2011. So, I see no reason why Mrs C would not have thought this was a legitimate investment.

I've gone on to consider whether HS's intended purpose for the payments aligned with what Mrs C intended as set out above. I've seen evidence that three building projects were completed by HS. They had other projects ongoing, however these had to be sold to other developers after they entered into financial difficulty. On balance, I think this shows HS was a legitimate company involved in legitimate building projects and I think it's unlikely a scam company would have completed three large scale building projects at significant cost in order to entice more funds from investors.

Mrs C's representatives have said HS paid unregulated introducers a high level of commission. However, I don't think there is a correlation between the level of commission and Mrs C being a victim of a scam in the circumstances.

It should be noted that the liquidator for HS has also not provided any evidence to suggest they were acting fraudulently or operating a Ponzi scheme. They are still in the process of investigating a significant number of transactions made from HS to various subsidiary companies, due to the way in which the HS network was set up. However, at the moment there is no indication that these transactions were made with the intention of hiding these funds and not using them towards development projects.

On balance, I think HS's intended purpose for the funds aligned with Mrs C's and nothing I have seen indicates to me that HS intended to defraud her. Instead, I think it's more likely this was a failed investment. So, I don't think it meets the definition of an APP scam, and I think Santander acted reasonably when it treated the case as a civil dispute.

And given that I don't think there is any clear evidence to show that HS was a scam, rather than a failed investment, and for many of the same reasons as set out above for Mrs C's payment to B, I do not consider that Santander could have prevented Mrs C's loss from the payments to HS had it intervened in those payments at the time.

It is possible that further evidence may come to light at a later date, which may indicate HS was operating a scam. Should such evidence come to light, then Mrs C can complain to Santander again, and refer the matter to this office, should she not be happy with the outcome.

My final decision

I do not uphold this 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.

Sophie Mitchell
Ombudsman