

The complaint

Ms C complains that Santander UK Plc didn't do enough to protect her when she made payments to a property investment opportunity that she now considers was a scam.

What happened

Ms C made five payments from her Santander account towards a property development investment with 'H'. Ms C received some small returns from H in 2019, but didn't receive what she expected. H went into administration in January 2022. Ms C now says the investment wasn't genuine and that she's been the victim of a sophisticated scam.

Ms C complained to Santander in January 2024, but it didn't uphold her complaint. It didn't consider she was the victim of a scam and said this was a private dispute between her and H.

Ms C was unhappy with Santander's response and brought a complaint to this service. Our Investigator didn't uphold her complaint as they said they hadn't seen sufficient evidence these payments went to a scam.

Ms C maintains that her complaint should be upheld and says that Santander failed to comply with PAS 17271:2017 (the PAS Code) and the CRM Code. Ms C has explained why she thinks H was operating a scam and was a Ponzi scheme. So, Ms C asked for an Ombudsman to reconsider her case.

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.

Taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), Santander should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). 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.

In 2018, Ms C made a £10,000 payment to invest in H. Given the value of the payment and Ms C's account history, I don't consider Santander did need to intervene on this payment. Ms C made a number of higher value payments in the months before this one, so it wasn't out of character for her account. But also, as our Investigator set out, even if Santander had intervened, I don't consider that a proportionate conversation would've changed Ms C's decision to invest.

I'm not persuaded the kind of information I'd expect Santander to have shared/discussed with Ms C would've prevented her going ahead. H was a legitimately registered company at the time Ms C paid into it and there wasn't anything in the public domain at the time to suggest Santander should've been concerned that Ms C might be falling victim to a scam.

Ms C has provided us with some paperwork for her investment with H. And our Service has previously been provided with some of the promotional literature for the investments with H. Having reviewed this, it's persuasive and comprehensive information for investors which sets out how it operates, and the returns expected. And from Ms C's testimony she also received and saw this paperwork. So, it seems highly unlikely that a conversation with Santander would've prevented Ms C going ahead with the investment when she held this professional and comprehensive information.

I haven't seen information that indicates Santander ought to have stopped the payment Ms C made in 2018 to H at the time she made it, or that anything it may have shared would've prevented her from going ahead in any event. So I don't consider Santander needs to refund this payment.

I've then considered whether Ms C is due a refund for her other payments (a total of £20,000 in 2019 and £30,000 in 2020) under the Contingent Reimbursement Model (CRM) code, as they were all made after this code was in force. As her representatives argue she 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 Ms C transferred funds to another person for what she believed was a legitimate purpose, but which was in fact fraudulent.

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

Our Investigator covered in detail why they considered the payment purpose Ms C 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 Ms C's purpose for making the payment was to invest in H and for the funds to be used towards property development. And that she was persuaded at the time, through the paperwork received and previous investing in 2018, 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 payments, it planned to use Ms C's funds in a different way to what was agreed. I haven't seen persuasive evidence that H's intention was to defraud Ms C when it took her funds.

Ultimately, 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 Ms C's funds, as required under the definitions within the CRM code. So I can't agree Santander was wrong to consider Ms C's situation a private, civil matter, or is wrong not to have reimbursed her under the CRM code at this time.

This also means I'm unable to ask Santander to reimburse Ms C on the basis that she was vulnerable at the time the payments were made, as her representative has alleged. When the CRM Code applies a customer can be reimbursed if they are vulnerable even when an exception to reimbursement applies. But as that's not the case here and the CRM code doesn't apply, I won't be asking Santander to reimburse Ms C.

I appreciate Ms C is now in a position where she's lost out financially due to this investment. But I don't consider her losses are the result of any failings by Santander.

My final decision

For the reasons set out above, I don't uphold Ms C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 6 June 2025.

Amy Osborne
Ombudsman