

The complaint

N is a limited company and is represented by its sole director, Mr D. He's brought this complaint against Santander UK Plc on N's behalf. He complains the bank hasn't refunded money sent from N's account toward a scam.

What happened

The background to this complaint is well-known to both parties and so I'll only summarise key details here.

Mr D found an investment opportunity advertised on a social media platform and made enquiries. What Mr D didn't realise at the time is that the post had been created by a scammer.

Unaware of that, Mr D was persuaded to invest. He authorised three bank transfers from N's account, making the payments to an account instructed by the scammers. In total he sent £137,000, all in June 2018.

Mr D received some returns on the investment into his personal account. But shortly after that initial payment the returns ceased, and the scammers became uncontactable.

Mr D raised a scam claim with Santander, on N's behalf, in February 2019. It declined to refund the loss. So Mr D went on to refer N's complaint to this service.

One of our investigator's considered the complaint and said it shouldn't be upheld. She could see that the money from N's account had been invested for Mr N's personal gain. And as such there was no loss to N.

The outcome wasn't accepted and so 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.

Having done so, I'm reaching the same outcome as the investigator, for broadly the same reasons.

The payments made from N's account were properly authorised, and there's no dispute over that. And so, as per the Payment Service Regulations (2017), N is responsible for those payments.

It is the case that account providers like Santander ought to have fraud prevention measures in place. And, in some instances, it might be fair and reasonable for a firm to reimburse a customer's loss should those measures fail to protect the customer from financial harm through fraud.

However, before determining whether Santander might be held accountable for any loss it must first be established that the customer has suffered one. Here, that isn't the case.

N is the customer bringing this complaint. Mr D has confirmed the money lost to the scam was owed to him by N and that the investment was intended for personal gain. This then means that N hasn't suffered a loss. That's because it has discharged its debt to Mr D by sending the money at his instruction and for his personal use.

I know the money was then lost to the scam. But that is Mr D's personal loss, and not that of N. And so it wouldn't be fair and reasonable to have Santander reimburse N for a loss it hasn't suffered.

Given this finding, it isn't then necessary for me to consider whether or not Santander acted fairly and reasonably in allowing the payments to be made. Whatever conclusions might be reached there, there wouldn't be fair and reasonable grounds for me to make an award of compensation.

My final decision

I don't uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 25 November 2024.

Ben Murray
Ombudsman