

The complaint

Mrs M complains that Santander UK Plc didn't do enough to protect her when she says she was the victim of an investment scam.

Mrs M is supported in making her complaint by a representative. But for ease, I'll only refer to Mrs M in this decision.

What happened

The background to this complaint is well known to both parties, and so I'll only refer to some key events here.

Mrs M says she wanted to invest her ISA funds, and after researching investments online, she came across an opportunity of an investment bond with a company (which I'll refer to here as 'B'). The investment was facilitated by a Financial Conduct Authority (FCA) regulated investment company (which I'll refer to here as 'NP').

Mrs M says the investment with 'B' was made via an electronic link emailed to her which was the investment portal for the transfer of funds to 'B'. She added that the payments then went to 'B's ISA Management company ('NP').

Mrs M says the investment in 'B' offered a 7% return over a three-year period in relation to '*sustainable healthcare projects*' and that she carried out checks into 'B', and its associated projects, before deciding to invest.

On 9 October 2018 Mrs M made a £16,600 payment from her Santander current account to secure the investment. She says she was told that her funds would be '*safeguarded*' in an account held by FCA regulated 'NP'. But that this wasn't the case – and instead the funds went direct to 'B' – which she says wasn't FCA regulated.

On 16 October 2018 Mrs M made a further payment towards the investment of £30,142.53. This was an ISA transfer from Mrs M's Santander ISA account to 'B', via 'NP', and was made by cheque, in line with Santander's ISA transfer process in place at the time.

Mrs M received a bond certificate from 'B' on 29 October 2018 together with confirmation that her investment would be 'deployed' by 'NP'. 'B' also said:

'We are delighted to announce that your investment of £46,743 through the ['B'] ISA has been deployed by ['NP'] to ['B'] (the Bond Issuer) on 29/10/2018. Please find enclosed with this letter your Bond Certificate.'

Mrs M says she had limited further contact from 'B' who, in April and November 2021, updated her on her investment and told her that it was no longer able to actively market its products.

'B' also explained to Mrs M that there was a delay in repayments. No repayment has ever been received and contact with 'B' was lost.

'NP' went into liquidation in August 2021.

In November 2023 Mrs M contacted Santander asking for the money to be refunded as she believed the investment with 'B' was a scam. Mrs M said she'd received no warning from Santander at the time of the £30,142.53 ISA transfer – and so she didn't think it had done

enough to protect her from financial harm. Mrs M wanted Santander to refund her loss, together with 8% interest.

Santander declined Mrs M's claim on the basis that the payments predated the introduction of the Contingent Reimbursement Model (CRM code). It also considered this to be a civil dispute and said that Mrs M may have the option to pursue a claim through the Financial Services Compensation Scheme (FSCS) as noted on the FCA website.

Unhappy with Santander's response, Mrs M referred her complaint to the Financial Ombudsman. She maintained she'd been the victim of an investment scam. And if Santander had appropriately intervened when she made the £30,142.53 ISA transfer, she said her loss could've been prevented.

One of our Investigators considered the complaint but didn't uphold it. In summary, she thought the £30,142.53 ISA transfer should've been flagged by Santander. But in any event, she didn't think any intervention from Santander at the time would've likely prevented Mrs M's loss. Our Investigator also thought there was no reasonable prospect of Santander recovering the lost funds, but suggested Mrs M might want to make a claim to the FSCS.

Mrs M didn't agree and asked for an Ombudsman to issue a final decision. She said there was evidence that 'B' was a scam and that the £30,142.53 ISA transfer should've looked unusual to Santander given she was closing the ISA account before the term had ended. Mrs M also said that:

'There were misrepresentations and inconsistencies between what was promised ..., such as funds being held in an FCA-regulated account and the actual redirection of funds to an unregulated entity which was a sign of potential deception'.

Mrs M further added that:

'the issue was when ['NP'] went into liquidation which was not followed up by the FCA, and ['B'] took advantage of this situation'.

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've decided not to uphold this complaint, for largely the same reasons as our Investigator. I know this is not the answer Mrs M was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation she's found herself in, and I can understand why she'd want to do all she can to recover the money she lost. But I need to decide whether Santander can fairly and reasonably be held responsible for Mrs M's loss. Overall, I've decided that it can't be. I'll explain why.

I'd like to say at the outset that I've summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there's a submission I've not addressed; it isn't because I've ignored the point. It's simply because my findings focus on what I consider to be the central issue in this complaint – that being whether Santander could've prevented Mrs M's loss - which, in this decision I will only be considering on the £30,142.53 ISA transfer, with a separate final decision addressing the £16,600 payment.

I accept the £30,142.53 ISA transfer Mrs M made on 16 October 2018 was an authorised payment. So, Mrs M is presumed liable for the loss in the first instance.

However, I've considered whether Santander should've done more to prevent Mrs M from falling victim to a possible scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

So, taking all of this into account, I need to decide if Santander acted fairly and reasonably in its dealings with Mrs M when she made the £30,142.53 ISA transfer, specifically whether it should've done more than it did before processing the transfer – and if it had, would that have made a difference. I also need to decide if Santander could've reasonably done more to recover the funds.

Was this a scam?

Whether Mrs M was the victim of a scam, or a failed investment, is a difficult point to resolve conclusively – particularly given the passing of time here. But for the purpose of this decision, I don't need to make a finding on that point. Instead, I'm focusing on whether action by Santander could've prevented Mrs M's loss based on the information available at the time she made the ISA transfer.

Should Santander have intervened before processing the payment?

Mrs M was closing her ISA account and transferring the balance. Santander has said it followed its ISA transfer process, but arguably, it could've asked questions of Mrs M about the reason for the transfer. However, as I go on to explain, I've not needed to make a definitive finding on that point, because I don't think a proportionate intervention by Santander before processing the ISA transfer would've likely made a difference.

Would intervention by Santander have made a difference and prevented Mrs M's loss?

For me to find it fair and reasonable that Santander should refund Mrs M would require more than a finding that Santander ought to have intervened. Crucially, I'd need to find that but for this failure, the subsequent loss would've been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by Santander wouldn't have revealed the £30,142.53 ISA transfer was part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented it from being actioned.

To reiterate, Santander's primary obligation was to carry out Mrs M's instruction without delay. It wasn't to concern itself with the wisdom or risks of her decision.

In particular, Santander didn't have any specific obligation to step in when it received an instruction to protect its customers from potentially risky investments. The investment in 'B' wasn't an investment Santander was recommending or even endorsing.

Santander's role here was to make the transfer that Mrs M had told it to make. Mrs M had already decided on that investment. And I find that Santander couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mrs M's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mrs M (which there wasn't here) would've gone far beyond the scope of what I could reasonably expect of Santander in any proportionate response to a correctly authorised instruction from its customers.

What matters here is what any proportionate intervention by Santander is likely to have uncovered at the time. Mrs M may now have concerns about the operation of 'B', and the legitimacy of the investment, and 'NP' has since gone into liquidation. But I must consider what Santander could reasonably have established during a proportionate enquiry to Mrs M about her ISA transfer back in October 2018. I cannot apply the benefit of hindsight to this finding.

Both 'B' and 'NP' were registered companies at the time, and Mrs M seemingly found nothing of concern when carrying out her own due diligence checks prior to her decision to invest. 'NP' was also FCA regulated – which Mrs M says understandably gave her

reassurance that her funds would be protected. It appears that 'B' wasn't FCA regulated, but that doesn't automatically mean the product it offered wasn't legitimate.

Mrs M says she was misled into thinking her funds would be paid to, and protected by, an FCA regulated company ('NP'). And that the funds being '*redirected*' to 'B' demonstrated an intention to deceive. I can understand how, with the benefit of hindsight, Mrs M has taken that view. But the investment was made through, and facilitated by, 'NP' – which was FCA regulated to provide investment advice. And the ISA transfer was made direct to 'NP', in accordance with what was promised to her. So, even if Santander *had* questioned Mrs M about the reason for the £30,142.53 ISA transfer, I think the involvement of 'NP' would've likely come to light and reassured both Mrs M, and Santander, of the investment in 'B's' legitimacy.

Further, Mrs M was being supported in making the investment by 'NP', who I can see had its own dedicated team in relation to the investment in 'B'. That suggests to me that if Santander *had* raised any concerns about 'B', or advised Mrs M to carry out more checks into 'B', I think it's likely, on balance, that 'NP' would've been able to reassure her.

Taking all this into account, I think it's more likely than not Mrs M would've proceeded with the £30,142.53 ISA transfer – even if Santander had alerted her to the risks involved and the checks she should make. I think it would've taken something more credible, like regulatory warnings, or something in the public domain suggesting 'B' (or 'NP') wasn't legitimate, to have concerned Santander, or made Mrs M pause and think more about her decision to invest.

Therefore, I don't think any proportionate action from Santander is likely to have made a difference. So, I don't think it's fair or reasonable, in the circumstances of this complaint, to hold Santander responsible for Mrs M's loss.

In terms of trying to recover the lost funds; I'd expect Santander to attempt this at the point it's alerted to the loss. But more than five years had passed by the time Mrs M contacted Santander. And 'NP' had gone into liquidation by this time.

And so, I can't say Santander had any reasonable prospect of recovering the funds in 2023, given the passing of time and because 'NP' had gone into liquidation two years previously. As our Investigator has suggested, Mrs M might want to consider making a claim to the FSCS, if she's not already done so.

I have a great deal of sympathy for Mrs M and the loss she's suffered. But it would only be fair for me to direct Santander to refund her loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision **before 29 April 2025**.

Anna Jackson
Ombudsman