

The complaint

Mr and Mrs C complain Santander UK Plc (“Santander”) won’t refund the money they lost to a scam.

What happened

Mr and Mrs C told us in August 2018 they made two payments of £15,000 towards a property development investment that they now believe to be a scam. However, there’s a discrepancy, Santander’s provided a system note which shows the payments were made in August 2021. I find the system note more persuasive and as it doesn’t make a material difference to the outcome, for the purpose of the decision I’m going to proceed on the basis the payments were made in 2021.

Mr and Mrs C said they understood the investment to be safe and they’d receive a 12% fixed rate of returns per annum.

Mr and Mrs C complained to Santander, and their complaint wasn’t upheld. Unhappy with Santander’s response, Mr and Mrs C raised the matter with the Financial Ombudsman. One of our Investigators looked into the complaint and didn’t uphold it. They weren’t persuaded Mr and Mrs C had been the victim of a scam and rather they paid a legitimate company.

As an 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.

I would like to say at the outset that I’ve considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It’s simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Mr and Mrs C were the victim of a scam and if Santander is responsible for the loss they claim to have suffered.

I’m sorry to hear of what’s happened to Mr and Mrs C, and I understand why they feel the money should be refunded. However, I don’t find that Santander has acted unfairly in processing the payments, declining their claim and deciding not to refund their money for broadly the same reasons as our Investigator. I’ll explain why.

Where the evidence is incomplete, inconclusive, or contradictory, I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in light of the available evidence and the wider surrounding circumstances.

In line with the Payment Services Regulations 2017, consumers are generally liable for payments they authorise. Santander is expected to process authorised payment instructions without undue delay. But they also have long-standing obligations to help protect customers

from financial harm from fraud and scams. Those obligations are however predicated on there having been a fraud or scam. And so, it would only be reasonable for me to consider whether Santander is responsible for the loss Mr and Mrs C claim to have suffered if, indeed, they have been scammed. I've therefore considered whether Mr and Mrs C were victims of a scam.

Whether someone has been scammed, or the matter is a civil dispute can be finely balanced. In this instance Mr and Mrs C knowingly made the payments, so they are authorised push payments (APP). But for me to be satisfied someone has been the victim of an APP scam, I need evidence to show the customer has been dishonestly deceived about the purpose of the payments at the time they were made. Having considered the evidence here, I'm not persuaded Mr and Mrs C have been the victims of a scam and I think the matter is a civil dispute.

I'm aware the investment company completed multiple projects which suggests it used investors funds as it stated and as was expected by the investors. This isn't typical of a scam. The company went into liquidation and the liquidator investigation hasn't provided us with any evidence to show the company was operating a scam. Based on the evidence I've seen, I'm not persuaded that Mr and Mrs C have been the victims of a scam because I've not seen enough to show they were dishonestly deceived about the purpose of the payments at the time they were made.

It could be said the value of the payments meant Santander ought to have intervened prior to processing them. It told us it gave a warning regarding paying a bill but hasn't provided anything further on this. I believe on balance had Santander intervened it wouldn't have prevented Mr and Mrs C from making the payments. I say this because neither they nor Santander had identified sufficient cause for concern that the investment may have been anything other than legitimate at the time. I think had Santander intervened to understand the circumstances of the payments Mr and Mrs C would more likely than not have been able to provide reassurances about the investment. As mentioned, it had completed previous projects and I'm aware the company was registered on Companies House which will also have been reassuring to both parties. I'm therefore not persuaded intervention from Santander would have stopped Mr and Mrs C from making the payments.

I've also checked the official organisations that publish warnings about merchants that operate in the UK and abroad. I've searched the Investor Alerts Portal of the International Organization of Securities Commissions, the international body that brings together the world's securities regulators. As well as the Financial Conduct Authority (as the UK regulator) also has its own warning list in place to share alerts and insight about merchants that have been identified as potentially being fraudulent or at risk of scamming individuals. There were no such warnings about the investment company Mr and Mrs C paid. So, this is another reason why I don't think the payments ought to have been automatically prevented by Santander.

I've also thought about the Contingent Reimbursement Model which Santander is a signatory of. The code isn't a relevant consideration as it only applies where customer's have been the victim of a scam, and as I've explained I find this matter is a civil dispute. If for argument's sake the payments were made in 2018, and I'm not saying they were, the code still would not be relevant for the same reason but also because this was prior to the code's introduction in May 2019, and it isn't retrospective.

Santander should protect their customers from fraud and scams – by looking out for unusual or suspicious payments and carrying out additional checks before processing them. But, as I've explained, these obligations are predicated on there having been a fraud or scam. And

given I've concluded that these payments weren't made as part of a scam, these obligations don't apply here.

I'm sorry to disappoint Mr and Mrs C further but it would only be fair for me to ask Santander to refund the payments if I thought they had been lost as the result of a scam and that Santander was responsible for it. As I'm not persuaded that this was the case, I don't think Santander needs to do anything further.

My final decision

My final decision is that I do not uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 1 August 2025.

Charlotte Mulvihill
Ombudsman