

The complaint

Mrs K complains that Santander UK Plc won't refund money she lost when she fell victim to an investment scam.

Mrs K is being represented by a company I will refer to as "M".

What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows.

Mrs K says she fell victim to a scam after she made a payment of £10,000 in November 2018 to an investment opportunity with a company I'll refer to as "T".

Mrs K says she was introduced to T by a friend, who had also invested with them. She said T offered 40,000 shares with the promise that the company would go public and be listed on the FTSE 500 in 2020. After carrying out research and relying on her friend's recommendation, Mrs K made the payment.

Once the payment was made, Mrs K said she was left in the dark. She realised she had been scammed when T stopped all contact in 2021.

M complained to Santander on Mrs K's behalf, as they refused to refund the disputed payment. Santander said the payment did not fall within the remit of the Contingent Reimbursement Model (CRM) Code due to it being made before the code came into practice. They also explained that they had carried out all of the correct steps when Mrs K went into the branch to make the payment, and therefore they wouldn't be willing to refund the lost funds.

Unhappy with this outcome, M referred Mrs K's complaint to our service. Our Investigator didn't uphold the complaint. They concluded that they hadn't seen credible evidence to persuade them that T was operating as a scam when Mrs K's payment was made. So even if Santander had contacted her prior to releasing the payment, it wouldn't have made a difference given T appeared to be operating legitimately at the time. And even if Santander intervened further, our Investigator concluded that given the investment was recommended by a friend, Mrs K would have always gone ahead with the payment as she had trust both in her friend, and the investment itself.

Mrs K disagreed and asked for an Ombudsman's decision. Because of this, the complaint has been passed to me.

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'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focused on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because

I've ignored it. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I've thought carefully about whether Santander treated Mrs K fairly and reasonably in their dealings with her, both when she made the payment and when she reported the scam, or whether they should have done more than they did. Having done so, I've decided to not uphold Mrs K's complaint. I know this will come as a disappointment to her and so I want to explain why I've reached the decision I have.

I have kept in mind that Mrs K made the payments herself and the starting position is that Santander should follow their customer's instructions. So, under the Payment Services Regulations 2017 (PSR 2017) she is presumed liable for the loss in the first instance. However, there are some situations when a bank should have taken a closer look at the wider circumstances surrounding a transaction before allowing it to be made.

It may help for me to explain that not every complaint referred to us as an investment scam is in fact a scam. Some complaints simply involve high-risk investments that resulted in disappointing returns or losses. Some traders may have promoted these products using sales methods that were arguably unethical or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they don't necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

M strongly believe that T was operating a scam, and that Santander ought to have intervened further when Mrs K made the payment. While I appreciate that M may want me to make a conclusive finding on this point, I don't think I need to do that in this case. This is because even if I were to accept that Mrs K was scammed, I'm not persuaded that Santander could reasonably have prevented the payment from being made. I will explain why.

When looking at how the payment was made, Santander say Mrs K went into branch to make the payment, whereas M state it was made online. When questioned further, M told us that Mrs K couldn't remember exactly how she made the payment. On balance, given what I have, it seems most likely the payment was made in branch as Santander have been able to provide system notes explaining this happened. Because of this, I will continue on the basis that the payment was made in branch.

Mrs K went into the branch in November 2018 to make the payment of £10,000. From the information I have, it looks as though Santander provided education and risk warnings about scams and asked questions about the payment. They verified Mrs K and she ultimately gave her authorisation for the payment to be made.

The script provided by Santander does appear to be very general and doesn't cover the specific circumstances relating to Mrs K, so I could argue that the branch staff could have probed and been more specific to her circumstances. However, from looking at the account history for Mrs K, I can see she had made larger payments to investments previously, so I'm satisfied this payment wouldn't have seemed out of the ordinary to Santander.

Mrs K had also been told about the investment from a friend who had sent money to T as well. Because of this, I am satisfied that it's most likely Mrs K would have reassured Santander that everything checked out, had they intervened and asked further and more probing questions.

For completeness, I have also done my own research, and at the time the payment was made, T appeared to be a legitimate business. And as there was no adverse information

about T in the public domain at the time, I'm not persuaded anything would have indicated to Santander that Mrs K was investing in a scam.

The Contingent Reimbursement Model Code

I note the Contingent Reimbursement Model Code has been mentioned in this case. Although Santander are signed up to the code, the payment Mrs K made from her account isn't covered by it because it was made before the code came into practice. So I cannot fairly and reasonably say that Santander should have to refund the payment under the code, because it doesn't apply here.

Recovery

I've also looked at whether Santander took the steps it should have once it was aware of the disputed payment.

I can see that Santander tried to recover funds shortly after being made aware of the scam. However, due to the amount of time that had passed, they were unsuccessful in getting any of Mrs K's money back.

In summary, I know that Mrs K will be disappointed with this outcome, not least because the matter has been ongoing for some time. But despite my natural sympathy for the situation in which she finds herself, for the reasons given, it wouldn't be fair of me to hold Santander responsible for her losses. I therefore won't be asking them to do anything further.

My final decision

For the reasons given, 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 K to accept or reject my decision before 21 August 2025.

Danielle Padden
Ombudsman