

The complaint

Mr M complains that Santander UK Plc won't refund money he says he lost to a scam. E is representing Mr M in this complaint.

What happened

On 6 June 2018, Mr M went into branch to make a payment of £20,050 to an unregulated property scheme (that I will refer to as W) from his Santander bank account. Mr M complained to Santander through E in 2022.

E says the transaction should have been flagged on Santander's fraud detection system for two reasons. Firstly, the payment was for a large amount of money. And, secondly, that Mr M had made a payment to a new payee. E went on to argue that Santander had breached its duty of care by failing to question the payment and, if it had done so, Mr M wouldn't have gone ahead with the payment – so the loss would have been prevented.

E has also raised a further point about the director of W and stated Santander ought to have been privy to this information and as such didn't act upon it.

Santander has said in its final response letter to Mr M that these types of claims would usually be part of the Authorised Push Payment Contingent Reimbursement Process, but the claim does not meet the requirement under the CRM code, as the payment was made before the code came into effect. It also said that there is no evidence that Mr M raised a claim with Santander to investigate this payment and concluded it was responsible for the loss Mr M suffered.

So, Mr M and E remained unhappy and referred the complaint to our service. Our investigator looked into the complaint but didn't recommend it be upheld. She thought that the payment didn't stand out as being particularly unusual or concerning, so, it wouldn't have flagged on its fraud detection systems. E didn't agree and asked for the complaint to be passed to an ombudsman to be considered.

I issued my provisional findings on 25 August 2023. This is what I said:

"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 agree with the investigator's findings for different reasons, which I will explain. Before I do so, I would like to say that I've taken into account E's very detailed submissions about what happened at the time. I hope E and Mr M doesn't take it as a discourtesy that I don't reply to every point made. The purpose of my decision is to explain my findings on the issues I consider key in the complaint.

Firstly, I agree with Santander that this complaint can't be considered in light of the Contingent Reimbursement Mode (CRM Code). I say this because the payment in question happened in 2018. So, the transaction took place before the CRM code came into effect. So, our service can't consider the complaint in line with CRM.

It's not in dispute that Mr M authorised the payment in question. He went into branch on 6 June 2018 and transferred £20,050 to a payment service provider. While I understand that Mr M didn't intend for his money to go to the potential scammer, under the Payment Service Regulations 2017 Mr M is presumed liable for the loss in the first instance as the payment was authorised by him. This remains the position unless there is sufficient evidence that Santander should have fairly and reasonably done more to protect him.

To put it another way, Santander has a responsibility to monitor accounts and payments and one of the reasons for this is to prevent fraud and scams. Santander need to have systems in place to look out for unusual transactions or other signs that might indicate its consumers are at risk of fraud, amongst other things. That said, it would clearly be an onerous requirement for Santander to question every payment and I consider it to be appropriate for a customer's previous account activity among other factors to be taken into account when deciding whether a payment does, or does not, present a heightened risk.

As Mr M and his representative has said he did fall victim of a scam I've considered whether Santander ought to have consider this payment as being so unusual or uncharacteristic that it should have given the bank sufficient grounds to suspecting potential fraud.

E has said that it feels Santander's fraud detective systems ought to have triggered for two reasons; the first being that the payment Mr M made was large and uncharacteristic. Secondly, it says Mr E had set up a new payee. Having reviewed the evidence, I am minded to agree. I say this because the payment Mr M made was substantial, it was an international transfer, which is unusual for Mr M and I have also considered that a new payee was set up on Mr M's account. As such, I think it is reasonable to conclude that this ought to have triggered Santander's fraud detection system.

Due to Mr M completing the transaction in branch and the passage of time that's since passed, there is limited evidence from the time the transaction was made. And Mr M can't exactly recall what was discussed on 6 June 2018. However, having considered the system notes provided by Santander, I can see that the notes say: "Transferring to investment company – customer said it wasn't a cold call". This indicates that Santander did query the transaction in question with Mr M and some further questions about the transactions were asked.

However, as explained above, due to the payment being significant, in my view, it would have been proportionate for Santander to have asked Mr M to provide further details (for the avoidance of any doubt, I am not suggesting Santander didn't do this but due to the lack of evidence from both parties, it is unclear). The types of questions I would have expected it to ask are who the money was being transferred to; why the payment was being made (which we have evidence it did ask); how he came across W (again evidence to suggest some discussion was had around this point); his previous investment experience and what research he had undertaken about W.

I have considered Mr M's answers to the limited questions we have evidence of Santander asking. Mr M indicated it wasn't a cold call and made it clear it was for an 'investment'. And while E has raised many points as to why Santander ought to have been aware this was a potential scam, the fact remains that W didn't enter into liquidation until 2020, i.e. two years or so after Mr M made this payment. So, there wasn't any significant concerns raised about W until some years after the payment was made or sufficient information in the public domain for Santander to be concerned about W.

I appreciate that E has said there was information available about the director of W (which E says would have indicated Mr M was exposed to potential financial harm). However, as E will be aware, the director of W changed his name. And just as Mr M wouldn't have

necessarily been able to establish this if he had completed his own independent research, I can't conclude it is reasonable that Santander ought to have been aware of this either. E has also mentioned that W had a Santander account, as such it ought to have been aware. However, bank staff at that time would not have been expected to have checked such details. So, I think this is an unrealistic expectation to require from Santander.

I have also considered the fact Mr M was provided by W with a comprehensive information memorandum about the investment. And while it's not uncommon for scammers to provide these comprehensive documents (which the banks are aware of), this along with the fact there was limited information about W being a potential scam, leads me to believe that any further intervention from Santander would not have resulted in Mr M doing anything differently.

This is supported by the fact that when Mr M was asked how he was contacted, he didn't say that he had received cold calls (as E has stated to our service). So, despite being given an opportunity to inform Santander that he had been approached by the potential scammer and there being a natural gateway to provide this information, Mr M did not reveal this.

Therefore, Santander wasn't given critical insight into what was really happening, denying it an opportunity to probe further. So, assuming Santander didn't ask the questions I would have expected it to, I cannot safely say if it had Mr M would have given answers which alerted Santander he was at risk of becoming victim of a potential scam.

E submits that W, or intermediaries acting on its behalf, did not act in accordance with relevant regulations (for example by breaching rules around the marketing of unregulated investments) and this might have been established by the bank. I think, in these circumstances, that's an unrealistic expectation of the kind of warning the bank ought to have given and, set against the weight of evidence at the time that W was operating legitimately would, in any case, be unlikely to have deterred Mr M from going ahead.

I have gone on to consider if Santander took reasonable steps to recover the funds for Mr M. However, Santander has said Mr M hasn't raised the issue with its disputed transaction team. Which has denied Santander the opportunity to attempt to recover the funds. I am also mindful that the transaction happened in 2018 and the complaint was raised with Santander in 2022 and due to the circumstances of the complaint, on balance, I think it is highly unlikely Santander could do anything further to recover the funds as it is unlikely the funds would have remained.

Consequently, despite my natural empathy for the situation Mr M finds himself in, having lost a considerable amount of money, I am currently not persuaded that Santander taking different actions would have prevented Mr M from making the payment, or incurring the loss that ensued. It follows that, as things stand, I do not consider it fair or reasonable to require Santander to do anything further."

So, it follows that my provisional finding was that I didn't uphold the complaint.

Both parties had an opportunity to respond to my provisional findings but didn't.

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.

As neither party responded or provided further comments for me to consider, my findings remain the same as I set out in my provisional findings.

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 Mr M to accept or reject my decision before 6 October 2023.

Jade Rowe
Ombudsman