

The complaint

Mrs K complains that Santander UK Plc has declined to refund the money she lost when she fell victim in 2018 to what now appears to have been an investment scam.

What happened

In February 2018, Mrs K invested in a bond issued by a UK based company (that I'll refer to as F). She made this investment through a £5,000 Faster Payments bank transfer from her Santander account.

F (and the associated group) has since entered administration. The liquidator has indicated investors in the bond may only be able to recover between 5-10% of their investments. While Mrs K says she received some interest payments from F, it therefore appears she faces the loss of the majority of her capital – a significant sum.

Besides the financial loss, Mrs K has detailed how the failure of this investment has had a significant impact on her personally.

Mrs K reported what had happened to Santander in 2023, alleging she had been the victim of a scam from which Santander had failed to protect her. She highlighted why she had serious concerns that F misled investors and had not been a legitimate investment scheme.

She complained when the bank did not reimburse her. Amongst other points, she said Santander hadn't acted in accordance with the relevant rules and guidance by failing to question her about the original payment. Had Santander done so, it would have come to light the investment was not legitimate, and her loss would have been prevented.

Santander said the payment had gone to an unregulated investment which has since gone into liquidation, and so it did not consider Mrs K had been the victim of a scam. This had been a failed investment and Mrs K had a civil dispute with F. In any event, Santander said it wasn't liable for any losses because Mrs K had authorised the payment, and it did not have any reason to intervene or block Mrs K's payment request.

Mrs K referred the matter to our service and one of our Investigators didn't uphold her complaint. She noted that Mrs K had made the payment online and Mrs K hadn't spoken to Santander about the payment. The Investigator thought Santander ought to have contacted Mrs K to discuss the payment as it was unusual compared to her typical account usage. But even had Santander done so, the Investigator didn't think the bank (or Mrs K) would have identified concerns about F sufficient that Mrs K wouldn't have proceeded - given what the bank and Mrs K could reasonably have uncovered at the time. The Investigator didn't think Santander could have prevented Mrs K's loss.

Mrs K maintained that had Santander intervened it would have been able to identify several concerning aspects of the investment, and therefore should have warned her about it. In particular, she'd have checked if F was registered with the FCA. Had the bank done so, this would have stopped her from making the payment, and avoided the loss she has suffered.

As no agreement could be reached, the case was 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. Where the evidence is incomplete or missing, I am required to make my findings based on a balance of probabilities – in other words what I consider is most likely given the information available to me.

I am extremely sorry to hear about the situation Mrs K is now in, following the failure of F, and the impact it has had on her. She has sustained a significant financial loss, through no fault of her own. She invested into F and Mrs K now has concerns that F was operating fraudulently. However, I do not have the power to consider the actions of F. The complaint I am limited to deciding is the one Mrs K brings against her bank, Santander. That means I must focus on whether I consider Santander was at fault in any way - and if so, what difference I think that fault likely made.

The starting position in law is that Mrs K is responsible for transactions she's carried out herself. Both sides accept Mrs K gave the payment instruction (albeit under the belief that she was making a genuine investment). Santander's primary obligation here was to carry out her instructions without delay.

However, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I'd expect Santander to have been on the lookout for out of character or unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud or scam.

In circumstances where such concerns arose, I'd expect the bank, as a matter of good industry practice, to have intervened to a proportionate extent prior to processing the payment instruction to reassure itself the payment wasn't likely part of a scam or fraud.

Here, Santander did not intervene to this extent. The bank's records appear to show it sent Mrs K a text message to her mobile to confirm she authorised the payment (which at that point she did, unaware of the concerns she later uncovered).

But even if I were to accept that Santander ought to have intervened to a greater extent and taken the further step of blocking her instruction until it could be discussed with Mrs K, I consider it unlikely this would have prevented her eventual loss.

I cannot rely on the benefit of hindsight – I must consider what Santander could reasonably have established in the course of proportionate enquiry to Mrs K about her payment back in February 2018. While there are now concerns about the legitimacy of F's business, these began to surface several years after Mrs K's payment was made.

Mrs K has provided copies of investment literature I understand she received at the time. Given the payment was being made online, Santander wouldn't have seen this. I don't think Santander could reasonably have been expected to insist on Mrs K producing this information before it would allow her to send her money to the scheme – it would need to have held serious concerns already for that to be a proportionate response. But in any event, I have considered whether it would have likely made any difference if it had.

The document appears professional and convincing. It gives an explanation of investment risks and recommended investors to seek independent financial advice prior to making an investment decision. It said the financial promotion had been approved by an FCA regulated firm. On the face of it, I don't think there was enough here for Santander (or Mrs K) to have reasonably suspected F was other than it seemed – this was in line with what a brochure for a legitimate investment might look like and say.

Mrs K explains that she'd been referred (by the adviser) to the FCA's website already. It had been suggested to her that she should check F against the FCA's warning list (where it did not appear). Had Santander suggested this to her, I cannot exclude the possibility that Mrs K would simply have explained she'd already been to the FCA website.

Even if Mrs K had not responded in that way, I think it's relevant that, at that time, the type of bond being offered by F wasn't one which would have required F to be registered with the FCA. So, F not being listed on the register would not be a particular cause for concern. Indeed, that point is made in the investment literature Mrs K has provided – finding out that information would not have contradicted the investment details she had received.

Instead, the brochure explained that the bond promotion had been authorised by an FCA regulated firm (as was required) and provided the name and details of that firm. Based on what I have seen, even if Mrs K had gone on to check that firm with the FCA, this further step wouldn't have uncovered any cause for concern – it was listed. Again, this matched what the brochure said.

Mrs K argues that F (or intermediaries acting on its behalf) did not act in accordance with rules around the marketing of unregulated investments, such as this was. She argues that the unsuitability of this investment for her as an investor should have been a sign to Santander that the advice was not legitimately provided - it should have identified and warned her about this.

However, Santander didn't have any obligation to step in to protect its customers from potentially risky investments. And I find Santander couldn't have considered the suitability or unsuitability of third-party investment products or advice without itself assessing Mrs K's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mrs K (which there was not here) would have gone far beyond the scope of what I could reasonably expect of Santander in any proportionate response to what, on the face of it, was a seemingly legitimate payment request from its customer.

All considered, I don't think it would've been readily apparent in 2018 that F might be fraudulent rather than simply a potentially risky investment. I'm not persuaded sufficient information was readily and publicly available at the time which would have caused Santander (or Mrs K) specific concerns about the risk of loss through fraud.

To summarise, I can only reasonably expect any enquiries by Santander to have been proportionate to the perceived level of risk. And while I've carefully reviewed all of Mrs K's submissions, I don't find that significant concerns would (or could) have been uncovered by Santander's proportionate enquiries at the time. Neither do I think Mrs K could have done so at the relevant time. All considered, I don't think it likely that Santander could have prevented this payment from being made, or otherwise caused Mrs K not to proceed.

Finally, the recipient bank has confirmed that at the time Mrs K reported the matter to Santander, no recovery of her funds could have been possible. So at that point, even had Santander agreed F was fraudulent and attempted to recover Mrs K's payment, it would

have made no difference.

Having carefully considered everything Mrs K and Santander have submitted, I don't find Santander could have reasonably prevented Mrs K's loss here. Neither do I find it materially at fault otherwise. I appreciate this will not be the answer Mrs K would like me to give her, and I am sorry to have to disappoint her. She has lost a significant sum. But it is simply the case that I don't consider I can fairly and reasonably hold Santander liable for that loss.

My final decision

For the reasons given above, my final decision is that I do not uphold Mrs K's complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 20 October 2023.

Stephen Dickie
Ombudsman