

The complaint

Mr D complains that Santander UK Plc (Santander) will not refund the money he lost when he fell victim to an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat them again here. The facts are not in dispute, so I will focus on giving the reasons for my 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.

Having done so, I agree with the conclusions reached by the investigator for these reasons:

In line with the Payment Services Regulations 2009, in force at the time, Santander was expected to execute authorised payment instructions without undue delay. It is not in dispute that Mr D was scammed. But nor is it in dispute that he authorised the payments. So the starting position is that he is liable for them.

But there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If Santander failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.

Mr D's complaint concerns three payments made between September and December 2016. They did not go directly to the scam company, but via two legitimate international money transfer merchants. So the payment destination would not have caused Santander concern. But from what I have seen, I think the size of the payments looked unusual within Mr D's account activity – so should have prompted further intervention by Santander.

I have not seen anything to suggest that Santander reached out to Mr D to find out more about the circumstances of the payments before processing them. But even if it had done so, I am not persuaded it would have succeeded in uncovering the scam and preventing Mr D's loss.

Mr D has told us he found the scam company (which I will refer to as F) from a national television advert, which reassured him they were legitimate. He says F's contact was professional and they sent him a contract which looked legitimate. He looked up F online and did not find anything concerning about them. He agreed to make a five-year investment with F, so was not expecting returns until 2021. F kept in touch with him until 2020.

F were a French company claiming to offer investment opportunities relating to plantations in the Ivory Coast. It appears they were genuinely registered, with premises and a director, in France. As our investigator pointed out, they also registered with Companies House in the

UK. Again, it had premises registered, and the company director's details were listed. All of this is unusual for an investment scam; it is normally not so easy to see who is actually running it. And setting up as a limited company creates legal obligations.

All of this made Mr D trust that F were legitimate. But, for similar reasons, I think it would have made it less obvious to Santander that they might be fraudulent. This appears to have been a sophisticated and long-term scam, given that F maintained contact for several years after the payments. I have not found any public information from the time of the payments indicating F might be operating illicitly, such as regulatory warnings – or even just anecdotal reviews (although I have found some indications of this from more recent years).

I think the fact F were operating abroad, and the nature of investment opportunity they claimed to offer, would have made the regulatory requirements less clear to the bank. Bearing in mind that Santander's obligations to look out for, and respond to, indications of fraud do not go so far as expecting it to provide investment advice, I do not think it would have been clear from speaking to Mr D that he was being scammed. And so I am not persuaded that any failings by Santander, at the time of Mr D making these payments, caused or contributed to his loss.

As our investigator explained, the Lending Standards Board's Contingent Reimbursement Model (CRM) code was not in force at the time of these payments. So this does not affect Santander's liability to refund Mr D.

When Mr D reported the scam to Santander in 2020, it could not successfully recover any of the loss. He was out of time, under the scheme rules, to raise a chargeback claim in a bid to recover the card payment. In any event, such a claim would not have succeeded as it would have only considered whether the merchant paid directly (i.e. the money transfer company) provided the expected service.

For both the card payment and the transfers, the funds were legitimately processed by the money transfer companies and then paid on to the scammers. So Santander could not recall the transfers either, as the funds had already been moved on.

I appreciate this will be disappointing for Mr D, who has clearly lost out to a cruel and sophisticated scam. But I have not found sufficient grounds to fairly hold Santander liable for his loss.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 August 2023.

Rachel Loughlin
Ombudsman