

## **Complaint**

Mrs F is unhappy that Santander UK Plc hasn't reimbursed her after she fell victim to an investment scam.

## **Background**

The background to this case is well known to the parties so I'll only summarise the facts briefly here. In January 2015, Mrs F invested £10,000 in a bond with a one-year term. It operated as expected – interest payments were received, and it was redeemed on maturity in early 2016. Persuaded that she was dealing with a legitimate company, she made a further investment of £25,000 from a joint account. That payment has been considered under separate cover. Mrs F also has a Santander account in her own name. From that account, she made several payments in connection with this investment opportunity. In total, she transferred a little under £130,000.

In June 2019, she received a letter saying that insolvency proceedings had begun and that the company was to be liquidated. The details of that insolvency process were far from straightforward and involved a huge number of creditors and multiple interconnecting companies. Mrs F considered that the actions of the company were fraudulent. She notified Santander and asked that it reimburse her. It looked into things but concluded that she hadn't fallen victim to a scam. Instead, she had a private civil dispute with the company she'd invested with.

She referred the case to this service. It was looked at by an Investigator who didn't uphold it. She said that the evidence suggests that Mrs F didn't fall victim to a scam but was simply unfortunate to invest in a company that failed. She added that, even if she found that there was evidence to show otherwise, she wasn't persuaded that Santander could be considered responsible for failing to stop the payment because it couldn't realistically have spotted any potential risks with the company she was investing in.

Mrs F disagreed with the Investigator's view. She's argued that the bank ought to have spotted that the payee in this case had a subtly different name to the company she believed she was paying. She thinks the bank ought to have picked up on that discrepancy and warned her about it. She also pointed out that this was an investment in an unregulated bond. The company marketing these bonds to her was legally required to be authorised by the Financial Conduct Authority (FCA). The bank could've warned her that, if the company was offering investments without authorisation, this was likely to be a scam.

## **Findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting point in law and under the Payment Services Regulations 2017 is that Mrs F is generally liable for payments that she's authorised. There's no dispute here that she authorised these payments to the company and so she is liable at first instance. However, that isn't the end of the story. Good industry practice required that Santander be on the

lookout for account activity that was unusual or out of character such that it might indicate that its customer was at risk of financial harm due to fraud. On identifying such activity, I'd expect it to take proportionate steps to protect its customer from that risk – for example, I might expect it to call the customer to discuss the payment before allowing it to be processed.

However, none of that applies unless Mrs F has actually fallen victim to fraud. To say definitively that she was a victim of fraud, I'd need (amongst other things) to be persuaded that the evidence shows there was an intent to defraud. I obviously cannot know what was in the minds of the individuals running the company she invested with, so I have to look at the circumstantial evidence and attempt to infer what those intentions likely were.

I'm not persuaded that there is enough evidence for me to make such a finding here. The fact that the company failed doesn't necessarily imply wrongdoing on the part of its directors. A company can fail for a multitude of innocent reasons. There is a great deal of speculation that the way the company operated indicates fraud – more than one registered company and several special purpose vehicles for individual property projects. However, it's noteworthy that Mrs F (and many other investors) have been in correspondence with the police for over a year. While the complaint has clearly been taken seriously, it doesn't appear that the police are treating the conduct of the company directors as criminal.

While I'm not ruling out the possibility that she was the victim of fraud, I'm afraid that wouldn't automatically mean that her complaint must be upheld. These payments predate the introduction of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code – so the Code isn't applicable. However, Mrs F made several sizeable payments here – the first of which was for £20,000. Even though the expectations on banks have evolved over time, I'd still have expected, all else being the same, a payment of that size to prompt a bank to carry out additional enquiries before processing it.

Santander ought to have spoken to her before allowing the payment to go through and asked her some questions about the investment to satisfy itself that she wasn't at risk of financial harm. But if it had done so, I don't think there was anything about the arrangement that would've given them any reasonable grounds for concern.

All of the evidence would've pointed to this being a legitimate company that had been trading uneventfully for several years. There was no negative information online about the company that might have caused Santander concern. The fact that she had been an investor in the same company before and had received returns as expected would've strengthened Santander's conviction that there was no real risk of fraud.

Mr and Mrs F have shared information with us about ongoing legal proceedings, including statements given by the insolvency practitioners working on the liquidation. These seem to suggest that the company promised potential investors significant returns which, in reality, would only have been payable from funds provided by other investors. In other words, the company may have been operating as a Ponzi scheme. It isn't surprising then that there wouldn't have been any reason for Santander to have suspected fraud back in 2016. By their very nature, Ponzi schemes don't tend to look like scams until the point that they fail.

I've taken into consideration the observations Mrs F has made about the fact that what the company was doing required authorisation by the regulator, the FCA. It's correct that the business she dealt with would've required authorisation to promote the bond to her, although the operation of actual investment itself wouldn't have needed authorisation. While I accept that the bank could theoretically have identified this in a conversation with Mrs F, I'm not persuaded that it's a realistic expectation of the type of warning it ought to have given in any telephone call it should've had with her.

That information would not have been enough for it to have definitively warned that Mrs F was transferring her money to a fraudster. And I think if it had accurately summarised the concerns (i.e., that investments generally can't be promoted to retail investors by anyone without FCA authorisation) I think this would've seemed like a pedantic observation and would be unlikely to have prevented her from going ahead, particularly given that she'd earned the returns she expected when investing in the past.

### **Final decision**

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 12 January 2024.

James Kimmitt  
**Ombudsman**