

The complaint

Mr M complains that Santander UK Plc won't refund the money he lost when he sent a payment to invest in a scheme which he now believes was fraudulent.

He brings his complaint with the benefit of professional representation, but for readability in what follows I will predominantly refer to Mr M even where the arguments and evidence have been submitted on his behalf.

What happened

Mr M holds an account with Santander. In 2017, he recalls a friend, who worked in finance, suggesting an investment to him. This was a fixed term bond (or loan note) to a property development company (which I'll refer to as P).

Mr M says he'd never heard of a property development company failing. He carried out his own research and concluded that this appeared a good investment for him. He sent a single payment for £50,000 by Faster Payments transfer from his Santander account in October 2017.

Mr M has told us that he received some returns from the investment but cannot now recall the amounts. However, he has since learned that the property development company has entered liquidation. While the liquidation is ongoing, Mr M has been unable to recoup his money.

It appears he faces the loss of a significant amount of the capital he invested. He now suspects he may have invested in a fraudulent scheme, and so was the victim of an Authorised Push Payment Scam (APP scam).

Mr M reported these concerns to Santander in 2023, alleging he had been the victim of a scam from which Santander had failed to protect him. He complained when the bank did not reimburse him. Amongst other points, he said Santander hadn't acted in accordance with rules and guidance by failing to question him about the original payment. Had Santander done so, it would have come to light the investment was not legitimate, and his apparent losses would have been prevented.

Santander says it wasn't liable for any losses Mr M had incurred through this payment. It doesn't agree this has been established to have been an APP scam, but it notes an ongoing investigation into P in its home country. But the bank carried out the instructions Mr M had given it at the time - as it was obliged to. There was no reason for it not to have done so.

Dissatisfied, Mr M referred his complaint to our service for an independent review.

Our Investigator considered his complaint. But she didn't think Santander was liable for Mr M's losses. She didn't think this payment stood out from Mr M's usual transactions such that it should have prompted the bank to have had concerns. And even if Santander had asked Mr M for more information about the payment, she didn't think the bank (or Mr M) would have identified concerns about P sufficient that Mr M wouldn't have proceeded - given

what the bank and Mr M could reasonably have uncovered at the time.

In short, the Investigator didn't think Santander could have prevented Mr M's loss and she didn't find any other reason to say Santander was now liable for Mr M's losses.

Mr M didn't agree. He maintained that had Santander questioned him appropriately the bank would have been able to identify several concerning aspects of the investment, and therefore should have warned him about it. Mr M said the majority of the funding for P had come from private investors - often sold this investment by advisers receiving large commissions, and who may have made untrue claims about P. Santander should have had a duty of care to protect him from what he now believes to have been a fraudulent investment.

In light of this disagreement, Mr M's complaint has been referred to me to reach 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 was good industry practice at the time.

Where I find there to have been a fault or error, I have to consider what the consequences of this were. And where definitive evidence is unavailable, I must reach my findings on the balance of probabilities – in other words on what I consider most likely in all the circumstances, given the evidence available to me.

Upon reading all the available evidence and arguments, I have reached the same outcome as our Investigator and for broadly the same reasons. I consider the fair and reasonable outcome, in all the circumstances, is that Santander is not liable to refund Mr M for this payment. I am sorry to hear about what happened to Mr M and that he appears to have lost a significant sum. I appreciate this answer will be a disappointment to him. But I hope the following explanation will help him understand why I have reached this decision.

Mr M invested into P in 2017, and now has concerns that P was operating fraudulently. However, the complaint I am limited to deciding is the one Mr M brings against his 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 Mr M is responsible for transactions he's carried out himself. Both sides accept Mr M gave the payment instruction (albeit under the belief that he was making a genuine investment). Santander's primary obligation here was to carry out Mr M's 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 the payment doesn't look remarkable in the context of Mr M's prior usage of his Santander account. Within the previous twelve months, I can see he'd made several payments between £10,000 and £30,000. These included payments to what appear to have been higher risk investments, including peer-to-peer lending and spread-betting. So taken at face value, an investment in a property development bond wouldn't have necessarily appeared at odds with those prior payments.

Santander says it did not identify this payment as being unusual or out of character for Mr M at the time. I find that wasn't unjustified given Mr M's typical account usage.

But even if I were to accept that Santander ought to have intervened to a greater extent and taken the further step of questioning Mr M further before it processed his payment instruction, I consider it unlikely this would have prevented his 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 Mr M about his payment back in October 2017. While there may now be concerns about the legitimacy of P's business, these began to surface several years after Mr M's payment was made.

Mr M says Santander ought to have asked him to check the FCA register – his representatives argue that any adviser he'd received advice from should have been FCA registered. However, by Mr M's own explanation he made the investment without the benefit of advice. It was suggested to him by a friend and Mr M carried out his own research into its suitability as an investment. So, there was no adviser for Mr M to check against the register. If Santander had told him to do so, I think he'd have explained he'd carried out his own research and believed the investment was suitable for himself.

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 a third-party investment product without itself assessing Mr M's circumstances, investment needs and financial goals. Taking such steps to assess suitability without an explicit request from Mr M (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 2017 that P might be fraudulent rather than simply a potentially risky investment (even if that is Mr P's suspicion now). I'm not persuaded sufficient information was readily and publicly available at the time which would have caused Santander (or Mr M) 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 Mr M'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 Mr M could have done so at the relevant time. All considered, I don't think it likely that Santander could reasonably have prevented this payment from being made, or otherwise caused Mr M not to proceed.

When Mr M later reported the matter to Santander I can see it attempted to recover his funds. However, from what I have seen these had long since been removed from the receiving account, which was merely the route through which funds were directed to the investment scheme. I don't think there was anything more Santander could reasonably have done at this point to recover Mr M's money.

Having carefully considered everything Mr M and Santander have submitted, I don't find Santander could have reasonably prevented the losses Mr M appears to have incurred here. Neither do I find the bank materially at fault otherwise. In saying this, I don't underestimate the impact on Mr M of the loss of such a significant sum. However, 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 Mr M's complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 December 2023.

Stephen Dickie
Ombudsman