

The complaint

Mr W complains that Santander UK Plc (Santander) won't refund the money he says was lost to a scam.

What happened

There have been a few conflicting accounts put forward about how Mr W came to make the payments he's now disputing. But my broad understanding is that it occurred as follows:

In 2019, Mr W was looking to invest as he had received money from a property sale. He came across a property company, either from an unsolicited email or from online research, offering to help with a property investment. He spoke to the company then arranged to meet in person.

In the meantime, Mr W did research into the company (including looking at reviews and their website). And when they met in person, he thought they seemed professional. In July 2019, he made an investment with companies linked to an entity I'll refer to as "M". It appears these took the form of mini bonds, on the understanding the funds would be used to invest in property. Mr W bought the bonds by making two cheque payments of £200,000 each.

Through the same property company, Mr W was introduced to another company – "H" – offering a similar type of investment to M. He paid H £40,000 via cheque later in July 2019.

Mr W then experienced difficulties with M and H. Such as delays receiving returns and difficulties getting in touch with them. They ultimately both went into liquidation. He then saw information online saying both companies were being investigated, and suggesting they were a scam.

In late 2022, Mr W contacted Santander about his concerns he'd been scammed. He said it should have intervened due to the size of the payments. And if it had, the scam would have been uncovered because the investment(s) had been recommended by an unregulated financial advisor. Santander didn't agree it was liable to refund him for the payments, so Mr W referred his complaint to our service.

An investigator here reviewed what had happened – and didn't uphold the complaint. She thought it more likely the company/companies were operating legitimately at the time, so wasn't persuaded Mr W had been scammed – and therefore wasn't persuaded Santander held liability for his losses.

Mr W appealed the investigator's outcome. I've summarised the main arguments he put forward for why he believes he was scammed:

- He says the companies should have been regulated by the Financial Conduct Authority (FCA), as they were selling bonds – but they weren't. Likewise the company who introduced him to M and H weren't regulated to give financial advice.
- He pointed to the comments from an investigation which referred to M behaving in a misleading/dishonest fashion.

- He says the returns offered were too good to be true, and he was told the investments were “100% safe”.
- While the companies didn’t go into liquidation until after he made these payments, he still thinks they behaved fraudulently before then.
- There are reports online of H denying requests for withdrawals and treating people aggressively.

In February 2024, I issued my provisional decision explaining why I wasn’t minded to uphold the complaint:

It’s agreed that Mr W made these payments – meaning the starting position is that he is liable for them. However, there are situations when it might be appropriate for Santander to have looked into the wider circumstances surrounding a payment instruction before processing a transaction. Such as if the payment is uncharacteristic or otherwise indicative of fraud.

That said, Santander would not be expected to give investment advice. So, whether Santander should be held liable for Mr W’s loss due to its alleged failure to intervene is dependent on whether Mr W was scammed.

I’ve carefully considered all the information provided about both M and H. I understand why Mr W has concerns about how they operated. But overall, I’m not persuaded there is enough to show they tricked Mr W into making these payments under false pretences.

From what I’ve seen, it does appear that both companies did genuinely purchase property for development. That adds credibility to the idea they intended to use the money Mr W lent (in line with the bonds) to purchase property as an investment.

Furthermore, looking at the information Mr W has provided about M and H, as well as what I’ve found from my own research, it seems the official entities looking into them fell short of deeming them a scam.

The nature of this type of investment means there is a risk that, if the development/investment doesn’t succeed, then the investors will lose their capital. I appreciate there is evidence to suggest the money may not have been used in the way Mr W was led to expect. But I’m not persuaded it’s more likely the companies had dishonest intentions about how it would use Mr W’s funds at the time of his payments. It’s also plausible they fell into financial difficulties which rendered them unable to complete planned purchases and developments.

Of particular relevance is when Mr W made these payments. It’s well-documented the companies ran into financial difficulty. But the companies linked to M didn’t go into liquidation until 2021. I have seen an indication that, by around December 2019, M ought to have known it was insolvent. But I’ve seen nothing compelling to suggest it ought to have known that when Mr W made these payments in July 2019.

Similarly, I’ve not seen anything to suggest H ought to have known it wouldn’t be able to use Mr W’s payment as intended at the time. I note it did in fact complete on some development projects it undertook. It also didn’t go into liquidation until 2021.

I'd also point out that, while Mr W suggests the companies must have been operating a scam as they weren't FCA-regulated – businesses don't have to be in order to issue mini-bonds. There is also a difference between a company offering genuine services without the proper authority, and a company that isn't offering genuine services at all (albeit I appreciate not complying with appropriate regulation may be an indication of dishonest intent).

While Mr W has at points suggested the companies were offering unrealistic returns and had guaranteed there was no risk – at other points he has said the returns seemed realistic and he understood the investments involved risk. So I don't find this statement particularly compelling in determining whether he was scammed.

Overall, I've not seen enough to persuade me that the companies Mr W paid dishonestly duped him into paying them for a stated purpose which they didn't have the intention to fulfil. If the funds were instead lost due to those investment ventures failing, then it wouldn't be fair to hold Santander liable for Mr W's loss.

I do still appreciate why Mr W has concerns over the companies' conduct and honesty. But even if I am wrong and the payments he made were part of a scam – that isn't enough in and of itself for me to conclude Santander holds liability for his loss. It depends whether Santander's actions, or inactions, led to this.

I appreciate Mr W thinks Santander's (in)actions did cause his loss. He says it should have questioned him about the payments, due to their size – which was not at all typical for him. I do agree that the payments were uncharacteristic, so I can appreciate why he thinks Santander should have questioned him about what he was doing. Where I disagree with Mr W is his assertion that, through appropriate questioning, Santander would have uncovered the investments as a scam.

This is for similar reasons for why I've concluded it's not clear enough the companies were operating a scam at the time. If there is a valid question over that now, several years down the line when much more information has emerged about how those companies were operating – it's difficult to conclude Santander ought to have realised it might be a scam through questioning Mr W at the time.

The reasons Mr W has given to support why he thinks he was scammed generally came to light after he made these payments. As he has told us, the companies he was dealing with (in his view) presented professionally and seemed legitimate. I've seen various contracts and materials he has provided from M and H, and I can see why he was reassured they seemed above board. And if Santander had asked for these, to help gauge whether the investment seemed genuine – I don't think the documentation would have given them concern.

The fact the companies weren't regulated probably wouldn't have seemed particularly concerning either, given the type of investment. I also think it would have helped sway both Mr W, and Santander, that he had met some of the parties involved and had found their contact to be professional. Unfortunately, if this was a scam, it was a sophisticated one that I don't think was likely to have been uncovered at the time.

I appreciate this outcome will be disappointing to Mr W. He has clearly lost a significant amount, and I fully understand his concerns about how these companies have operated. However, my role here is to look at the role Santander played as his bank. For the reasons I've set out, I'm not persuaded it would be fair to hold Santander liable for the loss he has incurred – regardless of whether the companies he paid were operating a scam at the time of the payments.

I asked both parties to provide any further or comments they wanted me to consider when making my final decision. Santander has replied confirming it has nothing to add. Mr W has replied to confirm he disagrees with my provisional findings.

In summary, Mr W says Santander should have been more vigilant looking after his account given the sums involved. He says he could have lost his cheque book. Santander should have contacted him to clarify if he had made the cheques and to enquire about what they were for. Santander signed up to a new conduct code in May 2019 to help protect customers from fraud. He questions where there support was when he made these payments.

Mr W also says a company linked to H is still operating. He also says the agent did a good job and he had no prior knowledge of this type of investment – which the agent said was 100% safe. He says he wouldn't have known all the issues at the time as they were covered up. He's also explained he was in difficult circumstances at the time of the investment.

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've decided not to uphold it. This is largely for the same reasons I gave in my provisional findings – which I've set out above, and which form part of my final decision. So, I'll focus here on responding to the points Mr W has raised in response to the provisional decision.

I appreciate why Mr W thinks Santander should have been more vigilant. However, my provisional decision already covers why, even if Santander *had* spoken to Mr W about the payments, I'm not persuaded this would have prevented him from making them.

While Mr W says his chequebook could have been lost, we know that's not what happened. If Santander had called him to check this, he would have confirmed he had made the payments. The more pertinent issue is whether, if Santander questioned him appropriately about the investments he was engaging in, it would have suspected they were a scam. And the difficulty in reaching that conclusion, as Mr W's response acknowledges, is that the concerns with these companies weren't publicly known at the time he made these payments.

So, even if Santander had spoken to Mr W when it received the payment requests, I'm not persuaded it's likely this would have prevented him from proceeding. As I've covered in more detail above, the companies appeared to be operating properly and professionally at the time. I therefore don't think a warning from Santander about the common features of investment scams would have struck Mr W as relevant to what he was doing.

If Mr W had told Santander he had been told the bonds were guaranteed safe, that could have flagged as a concern. But there has been some inconsistency in his submissions about whether or not he understood there was a risk – which makes it difficult for me to conclude he would have said this if Santander had asked him at the time.

Moreover, even if Santander had got to a point of advising him to look into the companies further before deciding whether to proceed, I'm simply not persuaded this would have uncovered the companies as a scam (if they indeed were). As I've already covered, I'm not persuaded there was public information that was available and accessible at the time which would have given Mr W (or Santander) concern about the investments being offered.

Mr W has referred to a conduct code introduced in May 2019 – which I understand to be the Lending Standards Board's Contingent Reimbursement Model (CRM) code. That isn't a relevant consideration here as it doesn't apply to payments made by cheque. I'd also point out that, even when the payment type is covered, it would still need to be established whether the scenario fell within the code's definition of a scam (as opposed to a civil dispute). As I've covered above, I'm not persuaded there is enough to show Mr W was scammed by these companies.

I appreciate Mr W was clearly in difficult circumstances when he made these payments. As I've outlined, what I'm considering here is whether the scenario was a scam – and if so, whether Santander ought to have uncovered that at the time. For the reasons I've explained, I'm not persuaded that's the case. So this point doesn't affect the outcome I've reached. Nor does the point Mr W has raised about whether any companies linked to H are still operating.

I understand this is disappointing for Mr W. But, having carefully considered all the circumstances, I'm not persuaded there are fair grounds to hold Santander liable for the money he lost to M and H.

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 W to accept or reject my decision before 3 April 2024.

Rachel Loughlin
Ombudsman