

The complaint

Mrs P complains that Santander UK Plc won't refund money she says she lost to a scam.

What happened

Mrs P invested in an unregulated property scheme (that I'll call W). She made a payment of £5,000, by way of a faster payment, from her Santander bank account to W in November 2017. She complained to Santander through a representative in 2023. They argued that Santander had breached its duty of care by failing to question the payment and, had it done so, Mrs P wouldn't have gone ahead and the loss would have been prevented. Santander said the investment company was subject to a law enforcement investigation, so it wouldn't be able to fully respond to her claim.

Mrs P referred the matter to our service and one of our Investigators didn't uphold her complaint. They thought that the payment didn't stand out as being particularly unusual or concerning, so Santander would have had no cause to question it. Mrs P's representatives disagreed, they argued that other high value payments that Mrs P had made were mostly to her own accounts or known payees. They said that the £5,000 payment was large and to a new payee and that should have been sufficient for Santander to question it. Mrs P's representatives maintained that had Santander intervened it would have been able to identify several concerning aspects of the investment.

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.

The starting position in law is that Mrs P is responsible for transactions she's carried out herself. There's no dispute about that here.

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, Santander should, fairly and reasonably, have been on the lookout for out of character and unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud.

It would clearly be an onerous requirement for Santander to question every payment and I consider it to be appropriate for a customer's previous account activity, among other factors, to be taken into account when deciding whether a payment does, or does not, present heightened risk.

Having reviewed Mrs P's account statements, I can see that she made a number of payments which were of significantly higher value in the year before the payments were made (though I accept that some of these payments went to her own account or that of her husband and others may have gone to existing payees). The payment in dispute did not

reduce the balance of her account significantly and didn't form part of a concerning pattern of payments – both of which might be indicators of fraud.

Overall, I don't find that Santander ought to have been concerned about the payment and therefore it didn't make a mistake by failing to intervene. But, even if I were to accept that it ought to have spoken to Mrs P about the payment, it's difficult to see how any intervention would have prevented her loss. After all, it doesn't appear that any significant concerns were raised about W until years after this payment was made and it entered liquidation. Based on what appears to have been known at the time, I can't reasonably conclude that the bank would have recognised the risk that Mrs P would lose her money and I don't think there was sufficient information in the public domain for Santander to be particularly concerned about W.

Mrs P's representatives suggest that W or intermediaries acting on its behalf did not act in accordance with relevant regulations (for example by breaching rules around the marketing of unregulated investments) and this might have been established by the bank. I think, in these circumstances, that's an unrealistic expectation of the kind of warning the bank ought to have given in a short telephone call and, set against the weight of evidence at the time that W was operating legitimately would, in any case, be unlikely to have deterred Mrs P from going ahead.

Finally, any chance of recovering Mrs P's funds so long after the event would have been very small. Despite that, Santander did try to recover the funds from the bank which received them, but no money remained. So, I think its efforts to recover her money were reasonable.

I'm sorry that Mrs P has lost out, but I've decided that Santander aren't responsible for her loss.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 31 August 2023.

Rich Drury
Ombudsman