

The complaint

Mrs H is complaining that Santander UK Plc have not refunded payments she made to invest in a property company, which she now believes to be fraudulent.

The complaint is brought on Mrs H's behalf by a professional representative.

What happened

Mrs H was contacted by a cold caller who told her about an opportunity to invest in a property company. Mrs H was sent brochures and documents about the company which appeared convincing and professional. Mrs H decided to invest in some three-year bonds with a fixed interest rate.

On 17 December 2017, 23 March 2018 and 16 July 2018 Mrs H made three separate online faster payments of £10,000. The first two payments were made directly to an investment company which she believed was acting as an agent of the property company. The third payment was made to an account held with Electronic Money Institution (EMI).

During 2018 Mrs H received some 'interest' payments from the company. She now believes the payments were not genuine, but were paid from new funds from other investors to supply a 'false' security.

The 'interest' payments stopped, and at some point after this Mrs H suspected she'd been the victim of fraud. In October 2022 she contacted Santander through her representative to raise a complaint. Santander didn't agree to refund the payments to Mrs H because they considered this to be a civil dispute between the parties. Mrs H's representative then referred the complaint to us.

Our investigator looked into Mrs H's complaint, but she didn't think Santander should refund the payments she'd made. Mrs H didn't accept the investigator's view, so her complaint has been passed to me for review and a 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.

I do understand that this experience must have been very upsetting for Mrs H, and I'm sorry that she's found herself in this situation. It appears that she's lost out significantly here and I can see why she'd think she should receive a refund of the money she paid to the investment company. But I don't think that I can fairly say that Santander should refund the money Mrs H lost. I'll explain why.

Mrs H's representative has mentioned the Lending Standards Board's Contingent Reimbursement Model (CRM) code, which is a voluntary code designed to protect customers from Authorised Push Payment (APP) Scams. But this code didn't come into force until May 2019 – nearly a year after Mrs H's final payment was made – and it isn't retrospective. So, I can't consider her complaint with this in mind.

Mrs H's representative has provided a lot of information about why they believe the property company she invested in behaved fraudulently, much of which appears to have come to light some time after she made the payments in question. But I don't need to make a finding on whether the property company behaved fraudulently or not, because I don't think it makes a difference to the fair outcome of this complaint. I must make my decision based on the information about the property company that was available to both parties at the time Mrs H made the investment – in order to decide what, if any, action Santander should have taken at the time, and whether any action they did take would have made a difference to what happened.

It's not in dispute that Mrs H authorised the payments. And Santander have a duty to act on her instructions. But in some circumstances a bank should take a closer look at the circumstances of the payments – for example, if they ought to be alert to a fraud risk, because the transaction is unusual for the customer, or otherwise looks characteristic of fraud. And if so, the bank should intervene, usually by contacting the customer directly, before releasing the payments.

Mrs H's representative has explained why they think Santander should have intervened here when Mrs H made the payments to the investment company. They say the payments were high value and had been made to a new payee – and therefore should have been flagged on Santander's systems. Santander haven't commented on whether they did directly intervene or provide any warning to Mrs H - or if they didn't, why not.

It's true that the payments here were high value, and that Mrs H hadn't made any payments to the investment company before. But from reviewing Mrs H's statements I can see she had made a number of similarly high value payments (to other accounts in her name and to merchants) in the six months before she'd made the payments in question. The three payments were also made some months apart. In this context, I wouldn't conclude that the payments Mrs H made to the investment company and then to the EMI looked particularly unusual or suspicious. And the investment company itself was a legitimate company which was regulated by the Financial Conduct Authority (FCA) at that time.

But even if Santander had intervened here, for example by contacting Mrs H directly to ask some questions about the investment as her representative has suggested, I don't think this would have made a difference to her decision to proceed with it. I say this because Mrs H had clearly been led to believe this was a genuine investment opportunity and a safe place for her money. The documents she'd been supplied with about the property company were professional and convincing, and as I've said, the investment company was regulated by the FCA.

Santander could have given Mrs H general fraud and scam advice in relation to investing in particular. But I don't think I can fairly say they would have been able to give Mrs H any information that would have led her to do anything differently. I've not seen anything to show Mrs H would have had any reason to doubt the legitimacy of the investment at that time.

So, I think if Santander had intervened, Mrs H would have told them to proceed with the payments. And I don't think Santander would have had any grounds to do otherwise.

Once Mrs H told Santander she suspected she had been the victim of fraud, I would have expected them to attempt to recover her money immediately. Santander were originally contacted by Mrs H's representative in October 2022, and they spoke directly to Mrs H on 30 November 2022, but they didn't attempt recovery at that time. They did begin recovery attempts on 26 March 2023, after they received a complaint letter from Mrs H's representative.

Santander weren't made aware that Mrs H suspected she was the victim of fraud until over four years after she had made the payments. Due to the time that had passed, even if Santander had attempted recovery when they first spoke to Mrs H about this in November 2022, there was no reasonable prospect that recovery would have been successful. And I can see that when Santander did attempt to recover the three payments from the beneficiary banks they were unsuccessful. Overall, I don't think Santander ought to have done more to recover Mr H's money.

Mrs H's representative has told us she was vulnerable at the time she made the investment, because she was in her sixties, and was under medical supervision for a mental health condition. I'm sorry to learn of Mrs H's mental health condition, but I've not seen anything to show Santander were aware of this, or that it meant Mrs H was particularly vulnerable, such that Santander ought to have taken a different course of action here.

I'm very sorry to disappoint Mrs H. However, for the reasons I've explained, I don't think Santander should have done more to prevent her loss. So, it wouldn't be reasonable for me to ask them to refund the payments she made.

My final decision

My final decision is that I'm not upholding Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 23 February 2024.

Helen Sutcliffe
Ombudsman