

The complaint

Mr I complains that Santander UK Plc (“Santander”) failed to protect him from becoming the victim of an investment scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything in detail again here. However, in summary, Mr I believes he has been the victim of an investment scam.

Between September 2017 and January 2019, Mr I made three payments to “Company W”. Company W purported to be a legitimate investment company but Mr I now believes they were operating a scam. In total, Mr I made the following payments:

- £10,000 in September 2017
- £10,000 in October 2018
- £10,000 in January 2019

Mr I now feels that Santander should’ve identified the payments he was making as suspicious and contacted him to discuss them before it agreed to process them on his behalf. Mr I believes that had Santander done so, the scam would’ve come to light, and he wouldn’t be out of pocket now.

Santander doesn’t believe that Mr I has been the victim of a scam at all. It said Mr I had received some returns from Company W before it ultimately went into liquidation and because of this, Santander feel Mr I’s circumstances amount to a private civil dispute between him and Company W – rather than a scam that it should become involved in now.

Unhappy, with Santander’s response, Mr I brought his complaint to our service with the help of a professional representative.

One of our investigators looked into things but didn’t uphold the complaint. They said, even if they were satisfied that Mr I had been the victim of a scam, they didn’t think Santander would’ve been able to prevent the payments Mr I had made because, at the time, the investment he was entering into would’ve, on the face of it, appeared legitimate. So, they didn’t recommend Santander offer Mr I a refund now.

Mr I disagreed. He said that Santander should’ve identified the payments as suspicious at the time and had it done so, it would’ve become apparent that he was involved in a scam and the payments would’ve been prevented. He also said that, at the time the payments were made, Santander was already on notice that Company W was operating a fraudulent scheme and therefore the payments should never have been allowed to proceed.

As our Investigator couldn’t resolve the matter informally, the case has been 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.

In deciding what's fair and reasonable, 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 to be good industry practice at the time.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Having considered the submissions from both Mr I and Santander, I agree with the outcome reached by our investigator, and I won't be recommending that this complaint be upheld. I'll explain why.

Has Mr I been the victim of a scam?

Generally, my first consideration in a case like this would be to decide if Company W was operating a scam as Mr I and his representatives have suggested. In order to be persuaded of this, I'd need to be satisfied that Company W had the intention to defraud Mr I from the outset; and it would now be difficult to ascertain whether this was the case, so many years later. Here, though, I'm satisfied that I don't need to answer the question of whether or not Mr I was most likely scammed. This is because I don't think I could uphold this complaint even if I were to be satisfied that he had been. I'll explain why in more detail below.

Santander's obligations

Payment service providers like Santander have long-standing obligations to be alert to fraud and scams and to act in their customers' best interests. However, these obligations are predicated on there having been a fraud or scam. So, if Company W was not operating a scam, Santander had no obligation to prevent Mr I's payments to it, and so I couldn't reasonably hold it liable for them now.

If, on the other hand, Company W was operating a scam, I'm satisfied I still couldn't reasonably uphold the complaint. I say this because I don't think Santander would've been able to establish this and prevent the payments from leaving Mr I's account at the time.

It is accepted that Mr I authorised the payments now in question. So, under the Payment Services Regulations and the terms and conditions of his account, Mr I is presumed liable for his loss in the first instance. However, there are circumstances where it might be appropriate for Santander to take additional steps or make additional checks before processing a payment in order to help protect its customers from the possibility of financial harm from fraud. An example of this would be when a payment is sufficiently unusual or uncharacteristic when compared with the usual use of the account. In such circumstances, I'd expect Santander to intervene and ask some questions about the intended transaction before processing it.

However, there are many payments made by customers each day and it's not realistic or reasonable to expect Santander to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments.

So, I've firstly thought about whether the payments here could be considered out of character and unusual when compared with Mr I's usual account activity. I understand that Mr I's representatives feel they were and should've been considered suspicious enough to have warranted further intervention.

However, I've reviewed the transactions that left Mr I's account in the months leading up to the scam, and whilst I agree that the initial payment here is of a relatively high value, I still don't think it would've been remarkable enough at the time to have stood out to Santander and prompted further discussion.

I acknowledge that the first payment is for £10,000. So, it is for a relatively high amount and is being made to a new payee. However, Mr I has a history of making regular similar high value payments from this account. In the six months preceding this initial payment, Mr I had made eight payments from this account that range from £5,000 to £20,000 in value. And so, I don't think it would be reasonable to say this £10,000 payment was so out of character when compared to Mr I's usual spending on the account that Santander should've intervened and questioned it at the time.

The second payment, for a further £10,000, is made over 12 months later and is now being made to an established payee. However, I do think there is an argument that this should've prompted some further action from Santander. I say this because, by this point, the value of this payment is out of character for Mr I's account. He hasn't made any similar payments in the 12 months prior. And so, for the sake of completeness, I've thought about what I think would most likely have happened if Santander had stopped this payment, pending enquiries with Mr I, to check whether he was at risk of financial harm.

Having done so, I am not persuaded, that this would've likely resulted in this payment, and therefore the later payment, being prevented. I say this because even if Santander had provided Mr I with a scam warning and asked him further questions, I don't think it's plausible that Santander would've identified a potential scam and so I'm satisfied that Mr I would've more likely than not have gone ahead with his investment.

I say this because, at the time, Mr I was paying an established UK company which had been trading for two years, for a bond administered by an FCA-registered business. The returns on offer were not unrealistic, and he had been given professional documentation setting out a costed plan and the risks involved and setting out that the bond was safeguarded by an independent security trustee. At the time, there were no warnings or investigations against the companies involved. And so, it seems to me that the investment would've looked genuine at the time and it would be unfair now to think Santander could have reasonably foreseen that Mr I would later lose his funds. Indeed, the relevant authorities only began looking into this matter some years after Mr I's payments and are still investigating now. It's only with the benefit of hindsight and time that there might be some indication that it was possibly a fraudulent scheme.

So even if Santander had questioned Mr I, I would not expect it to have stopped the first or second payments or prevented the third. Even if it had given Mr I general warnings about cold callers and the possibility of a scam, I do not see that it was likely to have made a difference in this case. At the time, there was ultimately not yet a reasonable basis on which

to conclude this was a scam, whereas Mr I had been given good reason to feel reassured that this was in fact a legitimate investment.

I've taken on board what Mr I's representatives have said about Santander being on notice that Company W was operating a fraudulent scheme at the time and I questioned Santander about this. Having done so, I'm satisfied that Santander was not on notice of any wrongdoing at the time the payments now in question here were made and any action later taken by Santander was result of Company W going into liquidation.

Recovery of funds

Next, I've considered whether Santander should have done more to try to recover Mr I's money after he reported that he might've been the victim of a scam.

Unfortunately, Santander were only told about this many years after the payments had been made, Company W, by this point, had gone into liquidation. So, given the time that's passed and what the administrators have said about the likelihood of money being available, I don't think Santander could have likely recovered Mr I's funds by the time it was told about the scam allegation.

So, while I am very sorry to hear about what happened to Mr I, I don't think Santander should be held responsible for his loss now. I realise this will come as a disappointment to Mr I, this is a substantial amount of money, but I'm unable to reasonably come to another conclusion.

Summary

In summary, if Mr I's circumstances don't amount to him being scammed, there is no obligation on Santander to refund or to have done anything differently. And even if Mr I has been the victim of a scam, I wouldn't reasonably have expected Santander to have uncovered this and prevented the payments at the time – or to have recovered them when he complained many years later.

My final decision

For the reasons explained, I do not uphold this complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 23 November 2023.

Emly Hanley Hayes
Ombudsman