

Complaint

Mr and Mrs F are unhappy that Santander UK Plc haven't reimbursed them after they fell victim to fraud.

Background

The background to this case is well known to the parties so I'll only summarise the facts briefly here. In January 2015, Mr and Mrs F invested £10,000 in a bond with a one-year term. It operated as expected – interest payments were received, and it was redeemed on maturity in early 2016. Persuaded that they were dealing with a legitimate company, Mr and Mrs F made a further investment of £25,000. Mrs F made further payments from an account that was in her name only, but these are being considered under separate cover.

In June 2019, they received a letter saying that insolvency proceedings had begun and that the company was to be liquidated. The details of that insolvency process were far from straightforward and involved a huge number of creditors and multiple interconnecting companies. Mr and Mrs F considered that the actions of the company were fraudulent. They notified Santander and asked that it reimburse them. Santander looked into things but concluded that they hadn't fallen victim to a scam. Instead, they had a private civil dispute with the company they'd invested with.

They referred their case to this service. It was looked at by an Investigator who didn't uphold it. She said that the evidence suggests that Mr and Mrs F didn't fall victim to a scam but were simply unfortunate to invest in a company that failed. She added that, even if she found that there was evidence to show otherwise, she wasn't persuaded that Santander could be considered responsible for failing to stop the payment because it couldn't realistically have spotted any potential risks with the company they were investing in.

Mr and Mrs F disagreed with the Investigator's view and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting point in law and under the Payment Services Regulations 2017 is that Mr and Mrs F are liable for any payment that they've authorised. There's no dispute here that they authorised a payment of £25,000 to the company and so they are liable for it at first instance.

However, that isn't the end of the story. Santander has a range of duties and obligations that relate to protecting its customers from the risk of fraud. I won't set these out in full here, but broadly speaking it was expected to be on the lookout for account activity that was unusual or out of character such that it might indicate that its customer was at risk of financial harm due to fraud. On identifying such a transaction, I'd expect it to take proportionate steps to protect its customer from that risk – for example, I might expect it to call the customer to discuss the payment before allowing it to be processed.

However, none of these obligations are engaged unless Mr and Mrs F have actually fallen victim to fraud. To say definitively that they were they victims of fraud, I'd need (amongst other things) to be persuaded that the evidence shows there was an intent to defraud. I obviously cannot know what was in the minds of the individuals running the company they invested with, so I have to look at the circumstantial evidence and attempt to infer what those intentions likely were.

I'm not persuaded that there is enough evidence for me to make such a finding here. The fact that the company failed doesn't necessarily imply wrongdoing on the part of its directors. A company can fail for a multitude of innocent reasons. There is a great deal of speculation about the way the company operated suggesting fraud – more than one registered company and several special purpose vehicles for individual property projects. However, it's noteworthy that Mrs F (and many other investors) have been in correspondence with the police for over a year. While the complaint has clearly been taken seriously, it doesn't appear that the police are treating the conduct of the company directors as criminal.

While I'm not ruling out the possibility that Mr and Mrs F are victims of fraud, I'm afraid that wouldn't automatically mean that their complaint must be upheld. Their payment predates the introduction of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code – so the Code isn't applicable. However, Mr and Mrs F made a payment for £25,000. Even though the expectations placed on banks have evolved over time, I'd still have expected, all else being the same, a payment of that size to prompt a bank to carry out additional enquiries before processing it.

Santander ought to have spoken to Mr and Mrs F before allowing the payment to go through and asked them some questions about the investment to satisfy itself that they weren't at risk of financial harm. But if it had done so, I don't think there was anything about the arrangement that would've given them any reasonable grounds for concern.

All of the evidence would've pointed to this being a legitimate company that had been trading uneventfully for several years. There was no negative information online about the company that might have caused Santander concern. The fact that Mr and Mrs F had been investors in the same company before and had received returns as expected would've strengthened their conviction that there was no real risk of fraud.

Mr and Mrs F have shared information with us about ongoing legal proceedings, including statements given by the insolvency practitioners working on the liquidation. These seem to suggest that the company promised potential investors significant returns which, in reality, would only have been payable from funds provided by other investors.

In other words, the company may have been operating as a Ponzi scheme. It isn't surprising then that there wouldn't have been any reason for Santander to have suspected fraud back in 2016. By their very nature, Ponzi schemes don't tend to look like the scams until the point that they fail.

I don't say any of this to downplay or diminish the significance of what has happened to Mr and Mrs F. Their losses are very significant, and they have my total sympathy for what they've been through. But the evidence I've seen doesn't persuade me that Santander could've protected them in this instance.

Final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to

accept or reject my decision before 13 October 2023.

James Kimmitt
Ombudsman