

The complaint

Mr R complains that Santander has declined to refund the money he lost in 2017 to what now appears to have been an investment scam. He brings his complaint with the assistance of professional representation, but for readability, in what follows I will refer solely to Mr R.

What happened

In 2017, Mr R invested in an unregulated property scheme (that I'll refer to as W). It appears he made this investment through two Faster Payments bank transfers from his Santander account in June 2017 on consecutive dates. These amounted to a total of £20,000.

W has since entered liquidation and Mr R has highlighted significant concerns that it may have been operating fraudulently.

Mr R reported what had happened to Santander in 2022. He complained when it did not reimburse him. He said Santander had breached a duty of care by failing to question him about the original payment and, had Santander done so, it would have come to light the investment was not legitimate, and the loss would have been prevented.

Santander said it was not responsible for the loss. Mr R had authorised the payment, and it did not have any reason to intervene or block Mr R's payment request. These payments had been made before the APP scam code (the Contingent Reimbursement Model code or CRM Code) had been introduced and so the code didn't apply to Mr R's payments.

Mr R didn't accept this. He referred the matter to our service.

One of our Investigators didn't uphold his complaint. The Investigator thought Santander should have spoken to Mr R about the second of these payments prior to processing his instruction – given it was for a relatively large value and followed a similar large payment the previous day. But even had Santander done so he didn't think Santander (or Mr R) would have had sufficient grounds to conclude the investment was not legitimate given what it could reasonably have uncovered at the time. He didn't think Santander could have prevented Mr R's loss.

Mr R maintained that had Santander intervened it would have been able to identify several concerning aspects of the investment, and therefore should have warned him this was a scam. Without giving financial advice, the bank could nevertheless have given Mr R warnings. Had it done so, this would have stopped him from making the payments, and avoided the loss he has now sustained.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, 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.

The starting position in law is that Mr R is responsible for transactions he's carried out himself. Mr R doesn't dispute that at the time, he intended to make the payments, albeit in the belief he was investing in a legitimate scheme.

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, I'd expect Santander to have been on the lookout for out of character or unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud or scam.

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 instruction does, or does not, present a sufficiently heightened risk that it would justify an intervention before processing the transaction.

Here, Santander did not intervene. Arguably it did not need to. While each payment was for a relatively large amount, Santander has evidenced he'd made other large faster payments from his account, including one for the same amount, earlier in 2017.

But even if I were to accept that Santander ought to have intervened here and spoken to Mr R about one or more of these payments prior to processing them, I consider it unlikely this would have prevented his loss. While there are now significant concerns about the legitimacy of W's business, these first began to surface in the period surrounding W's liquidation, and therefore several years after Mr R's three payments were made.

I cannot rely on the benefit of hindsight – I must consider what Santander could reasonably have established in the course of proportionate enquiry to Mr R about his payments back in June 2017.

And with that in mind, I don't think it would've been apparent in 2017 that W was likely fraudulent rather than simply a risky investment. I'm not persuaded sufficient information was readily and publicly available at the time which would have caused Santander (or Mr R) specific concerns about this.

Mr R has provided copies of investment literature I understand he received at the time. This appears professional and not obviously anything other than legitimate. It gave an explanation of the risks involved, recommended investors should seek independent financial advice prior to making an investment decision and indicated that the financial promotion had been approved by an FCA regulated firm. On the face of it, I don't think there was enough here for Santander to have reasonably suspected W was other than it seemed.

It is possible of course that the investment might have represented a greater degree of risk than was suitable for Mr R to take. But Santander didn't have any obligation to step in to protect its customers from potentially risky investments. Taking steps to assess suitability without an explicit request from Mr R (which there was not) would have gone far beyond the scope of what I could reasonably expect of it in any proportionate response to what, on the face of it, were legitimate payment requests from its customer.

And while it is plausible to think that had Santander spoken to Mr R it might have given him general information about investment scam risks, I don't think a proportionate response from the bank would have led Mr R not to proceed of his own accord – again I simply don't think

he'd have been able to uncover information that would have caused him to question what he'd been told about W, disbelieve the literature he'd received, or have significant doubts about proceeding with the payments he was planning to make.

In short, while I've carefully reviewed all of Mr R's submissions, I don't find that significant concerns would (or could) have been readily uncovered by either Santander or Mr R at the relevant time. I can only reasonably expect any enquiries by Santander to have been proportionate to the perceived level of risk. All considered, I don't think it likely that Santander could have prevented these payments from being made, or otherwise caused Mr R not to proceed.

Finally, Santander attempted to recover Mr R's money from the recipient bank account. Unfortunately, given the time that had elapsed since the payments were originally made, and with W in administration, no funds remained for recovery by the time Mr R reported what had happened. I don't find Santander could have done more here.

Having carefully considered everything Mr R and Santander have submitted, I don't find Santander could have reasonably prevented Mr R's loss here. Neither do I find it materially at fault otherwise.

I appreciate this will not be the answer Mr R would like me to give, and I am sorry to have to disappoint him. He has lost a significant sum. But it is simply the case that I don't consider I can fairly and reasonably hold Santander liable for that loss.

My final decision

For the reasons given above, my final decision is that I do not uphold Mr R's complaint about Santander UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 October 2023.

Stephen Dickie
Ombudsman