

Complaint

Mr G is unhappy that Santander UK Plc didn't reimburse him after he fell victim to an investment scam.

Background

In 2017, Mr G was contacted by someone who claimed to represent a firm which offered him an investment opportunity. He was persuaded to transfer his money to the company, and it would invest it on his behalf, primarily in equities. Unfortunately, the person who contacted Mr G wasn't an employee of a legitimate company, but a fraudster.

There is limited information available about what Mr G was told. I understand practically all of his interactions with this company took place over the phone. Several years have elapsed since this contact took place. Understandably, Mr G can't recall exactly what returns he was told to expect or what the company's strategy was to earn a return on his money.

He made eight payments and the total value of them was a little under £120,000. The sixth payment triggered a check by the bank. It was for £63,290 and so was the largest payment he'd made in connection with the scam. It was also an international payment – the previous payments had all been to UK bank accounts.

The interaction with the bank was brief and mainly focused on some administrative checks that the call handler had to carry out. I've transcribed the relevant parts of the conversation below:

B: Where is the payment going to?

C: Dubai.

[...]

B: What are you trying to purchase in Dubai?

C: It's property.

B: A property purchase – and the payment is £63,290.

C: Yeah.

B: I'm going to put the payment through now ... so, the best of luck with your retirement and with your move to Dubai.

C: Thanks very much.

Once Mr G realised he'd fallen victim to a scam, he contacted Santander. Santander didn't agree to refund his losses. A few years later, Mr G engaged a professional representative to bring a complaint on his behalf about Santander's failure to protect him from the scam.

Santander reiterated its position. It said that Mr G had authorised the transactions and so Santander was expected to process them. It pointed out that these payments came before the introduction of the Contingent Reimbursement Model (CRM) Code and so those rules didn't offer any protection to Mr G here.

Mr G was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator thought that Santander

ought to have been concerned about some of the payments Mr G was making. In particular, the sixth payment was a large international payment and out of keeping with the way Mr G typically used his account.

In the Investigator's view, the risk that this payment might be connected with an investment scam was sufficiently clear that the bank shouldn't have processed it without first making enquiries with Mr G to satisfy itself that he wasn't at risk of financial harm due to fraud. However, the Investigator wasn't persuaded that any intervention by the bank would've made a difference. Mr G did speak to the bank at the time of that payment and he appeared to tell it that the payment was to purchase a retirement property in Dubai. The Investigator thought that, even if the bank had questioned Mr G about the payments, he'd have given this as the reason for making them and that would have allayed the bank's concerns.

Mr G's representatives disagreed with the Investigator's opinion. Its response was lengthy but the only part that directly addressed the crux of the Investigator's view was the following:

121. While the Complainant initially informed the Bank that the first international transaction was made in respect of "property", it is asserted that this was the short and minimal effort the Bank went to in order to satisfy itself of the transaction. With appropriate questioning, the Bank would have or certainly should have uncovered that the Complainant was actuality [sic] facilitating an international transfer of a significant sum of funds in response to mental manipulation and ultimately, a scam.

122. Had the Bank asked the Complainant further simple questions, such as the location of his property in Dubai, the full cost of the same, or even asked the Complainant to provide evidence of this purchase during his in-branch visit, it would have been clear that the transaction was not related to property..."

The Investigator responded to Mr G's representative on 27 March 2024. He asked why Mr G had given misleading information to the bank about the purpose of the payment. His representatives responded the same day but didn't respond to the Investigator's question. They asked that the case be referred to an ombudsman for a final decision. The Investigator then contacted both parties and gave a deadline of 10 April 2024 for any final submissions or evidence. Neither Santander nor Mr G's representatives responded.

As no agreement has been reached between the parties, the case 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 under the relevant regulations (initially the Payment Services Regulations 2009 and later the Payment Services Regulations 2017) is that customers are liable for payments that they've authorised. It's common ground here that Mr G authorised these payments, so he's liable for them at first instance.

However, that isn't the end of the story. Good industry practice at the relevant time required that Santander be on the lookout for activity that was unusual or out of character to the extent that it might have indicated a fraud risk. On spotting such activity, I'd expect it to intervene in a manner proportionate to the risk identified. The questions I have to consider when reaching a decision on this case are (a) to what extent Santander should have intervened in connection with any of the payments Mr G authorised and (b) if it had done so, whether it would've prevented the losses he went on to suffer.

As far as I can see, Santander only carried out limited checks in connection with one of the payments here. I've listened to the recordings of Mr G's conversation with the bank. I agree with his representatives that these interventions were too superficial to be effective. Santander should've asked him several open questions to identify what his intentions were and whether this was exposing him to the risk of fraud. Overall, I think the evidence does suggest Santander fell below the standard I'd fairly and reasonably expect of it in respect of the sixth payment.

However, I can't ask it to reimburse Mr G unless I can reasonably conclude that its error was the cause of his loss. I have to take into account the law on this point. That means I need to be able to affirmatively answer the following question – would the damage or loss which Mr G has complained about have occurred *“but for”* the failings of the respondent? In other words, is there sufficiently strong evidence to show that it's more likely than not that, *“but for”* the failing on the part of Santander, the relevant loss would not have occurred? If the loss would have occurred in any event, the conduct of Santander is not a *“but for”* cause.

To reach a conclusion on this point, I need to consider what would have happened if Santander had handled things differently. It ought to have contacted Mr G and asked him about the payment. I think, on learning that he was apparently using the funds to buy a property overseas, they should've posed some follow up questions to establish whether Mr G was merely providing them with a cover story.

I recognise that I can't know with certainty what Mr G would have done if this had happened. However, the only evidence I have as to how he would've responded if questioned is the fact that he gave misleading information to the bank about the purpose of the transfer. I don't know why he did this – for example, whether this was at the suggestion of the fraudster or something he came up with himself – because the Investigator's questions on that point weren't answered.

The representative has said that, if the bank had asked Mr G some simple questions, it would've uncovered that this was a scam. I don't think that necessarily follows. Without knowing the wider context in which Mr G gave this information to the bank, it's very difficult for me to reach a firm conclusion on how he would've acted if he'd been questioned about it. It's also been suggested that the bank should've asked for evidence of the purchase. However, I must keep in mind that firms need to strike a balance between disrupting the payment process to protect customers from fraud and allowing legitimate payments to be made. In my view, insisting that Mr G prove that he was purchasing property would be overreach on the bank's part.

Overall, while I agree that Santander should've done more here, I'm not persuaded that the available evidence shows that any shortcomings on its part were the cause of Mr G's losses.

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 G to accept or reject my decision before 26 July 2024.

James Kimmitt
Ombudsman