

The complaint

Mr E complains that Santander UK Plc ("Santander") have failed to refund over £56,000 he says he lost to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. Instead, I will provide a brief summary and focus on giving the reasons for my decision.

Mr E says he fell victim to an investment scam with a fraudulent telecoms company, which had been facilitated through an investment platform that purported to offer ethical Islamic investment opportunities. The investment had been recommended to him by a friend who was making good returns. Mr E subsequently made several payments totalling over £102,000 but realised he had been scammed when he requested a withdrawal and received no further contact from the scammers.

Mr E said he received returns of around £46,000 back from the company throughout the scam, which he says was designed as a ponzi scheme in order to entice him to invest larger sums. He complained that Santander should refund the remaining amount lost under the Contingent Reimbursement Model (CRM) Code ("The Code"). However, Santander declined to refund the outstanding loss, as it said Mr E had failed to meet his requisite level of care under the Code, in that he had ignored an effective warning and had no reasonable basis for believing the payments were genuine.

Our investigator upheld the complaint. He didn't think Mr E had failed to meet his requisite level of care under the Code and hadn't seen evidence of an effective warning having been provided. So, he said that Santander should have provided a refund in line with the Code. Santander failed to respond, so the matter has been escalated to me to determine.

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.

Having done so, I agree with the conclusions reached by the investigator and have decided to uphold it for the following reasons:

- It does not appear to be in dispute that Mr E has been the victim of a scam here, and Santander have also said that they suspect the telecoms company was operating a ponzi scheme. Having reviewed the relevant information, and having received information from other relevant parties, I'm also satisfied this was a scam and would therefore fall to be considered under the CRM Code.
- I've considered whether Mr E failed to take the requisite level of care required for Santander to choose not to reimburse him under the CRM Code, which requires payment service providers to reimburse customers who have been the victims of

authorised push payment scams like this, in all but limited circumstances. It is for Santander to establish that a customer failed to meet the requisite level of care under one, or more, of the exceptions set out in the CRM Code. The exceptions relevant to this case are that the customer ignored an effective warning, or had no reasonable basis for believing the payee was legitimate.

- Santander says that Mr E ignored effective warnings. When making the payments, he chose the option 'anything else' as he wanted to provide a more detailed response about what the payment was for. Santander says he chose the incorrect option as there was a specific option for investing. However, even if Mr E ought to have chosen this specific option, Santander has not been able to demonstrate that Mr E would have been presented with an effective warning. For a business to choose not to reimburse on this basis, it must show that the warning it gave would have been impactful in Mr E's circumstances. It has not provided evidence of what warning would have been provided – and has not shown what warning was provided based on Mr E's selection of 'anything else'. So, it has not established that Mr E failed to meet his requisite level of care by ignoring an effective warning.
- I also don't think Santander has been able to establish that Mr E did not have a reasonable basis for believing that he was making legitimate payments. He was introduced to the investment by a friend who was also making returns at the time, and had also heard from others in his community that they were investing too. This meant he had little reason to doubt it was a genuine opportunity, as it had come recommended from a trusted friend rather than someone who had approached him out of the blue. He said the registration process was professional, and that he had to provide identification and information about himself, which reassured him the companies were legitimate.
- Santander says that Mr E failed to carry out enough checks on the company. But Mr E said that he did look at the telecoms company online and saw they were registered on Companies House and had working eBay/Amazon accounts with positive reviews. He was also sent documentation and emails that all looked professional. He didn't consult the FCA website, but then he wouldn't have found anything about the telecoms company on the FCA website. Mr E was also receiving regular returns, which is a common tactic used by scammers (particularly in ponzi schemes) in order to entice their victims to invest larger sums. But it would have given Mr E the reassurance that he was investing in a legitimate opportunity as everything appeared as though he was making a return on his investment, and that he was able to make withdrawals.
- So, I'm not persuaded Santander has been able to establish that Mr E lacked a reasonable basis for believing the payments were genuine, and I don't consider he failed to meet his requisite level of care under the Code. I'm not satisfied that Santander met its standards as a firm under the CRM Code either as it has not been able to demonstrate that it provided any effective warning to Mr E despite there being an identifiable APP scam risk. Therefore, I conclude that Santander should have reimbursed Mr E under the provisions of the CRM Code.

My final decision

For the reasons given above, I uphold this complaint and direct Santander UK Plc to refund the payments Mr E made to the scammer, less any credits received.

Santander should also pay interest at the account rate on this amount from the date it declined Mr E's claim under the Code until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 10 January 2023.

Jack Ferris
Ombudsman