

The complaint

Mr K complains that Santander UK Plc hasn't refunded him after he fell victim to an investment scam.

What happened

The background to this complaint is well-known to both parties and so I'll only provide a summary of key events here.

Mr K was searching for investment opportunities in March 2021 and came across a business I'll call S. It was offering a fixed-rate bond, with the underlying investments to be made in property development.

Mr K was originally persuaded to invest £20,000 and he sent that money to the account details he was given, across three payments. But he changed his mind and asked to reduce his investment to £5,000. That was agreed to and £15,000 was sent back. The money was sent to, and returned by, an intermediary business that was FCA regulated. And Mr K's investment was to be passed from the intermediary to S.

Mr K did then begin to receive monthly returns. But these soon stopped, and S became uncontactable and went into liquidation. Mr K was unable to recover any of his money. It's then he came to believe he'd fallen victim to a scam and reported the matter to Santander.

Santander investigated Mr K's complaint and in doing so considered whether he was entitled to a refund under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. It said he wasn't due one as it believed Mr K hadn't been scammed, but instead had a civil dispute with S. So it said the Code didn't apply, and there were no other grounds on which it would refund Mr K.

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.

I'm upholding Mr K's complaint and I'll explain why.

In broad terms, the starting position at law is that a business is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes, and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's Contingent Reimbursement Model ('the CRM Code'), which Santander has signed up to.

The CRM Code provides additional protection from APP scams, but only in certain circumstances. For example, the CRM Code only applies where the characteristics of the victim's payment meets the CRM Code's definition of an APP scam.

Is this a scam as per the CRM Code?

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: "another person for what they believed were legitimate purposes but which were in fact fraudulent."

In order for this to apply, there are a number of requirements of which we'd need to be satisfied as well as information we'd need confirmation of.

Firstly, we need to consider the purpose of the payment and whether Mr K thought this purpose was legitimate.

We then need to consider the purpose the recipient had in mind at the time of the payments and whether this was broadly in line with what Mr K understood to be the purpose of the payment.

Lastly, if we determine that there was a significant difference in these purposes, we'd need to be satisfied that the purposes were so substantially different as a result of dishonest deception.

What was the purpose of the payment? Did Mr K think this was legitimate?

From what we know, Mr K was making the payment(s) to S in return for a fixed rate bond to be invested in property development. I can't see anything which would suggest that Mr K didn't think this was legitimate.

What was the purpose the recipient had in mind? Was that in line with what the consumer thought?

When looking at the purpose question here, I've taken account of the wider circumstances surrounding the business and its director links and other businesses. After reviewing all the available evidence on cases linked to S (and the linked businesses) these are the key findings:

- The director of S and the linked businesses has been disqualified as a director on Companies House for eight years by the secretary of state.
- The director has failed to provide liquidators with accounting records for liquidated businesses and has said he will not be providing these.
- The FCA issued a warning about the linked businesses in March 2020 saying they were providing financial services without authorisation.
- Despite saying S had assets of £34m, it never filed any accounts and wasn't independently audited at any point. There was a further company that took over S which also never filed any accounts, and the director was the same person. This company contacted investors to say their money would be safe despite the FCA

regulated intermediary going into liquidation, and then it cut contact with all investors.

- Police Scotland are now investigating the director, S and other linked companies.
- In some instances, S' brochures claimed to have agreements in place with Edinburgh City Council to lease local authority properties – ECC have now confirmed to our service that it had no record of any such contract or agreement with S or the director.
- There is no evidence to suggest S or the linked companies were operating legitimately. There is no evidence of any investments made. Some consumers received small monthly returns while others received no returns at all.
- The Insolvency Service has also made comments following its investigation into S and the linked companies confirming investors were routinely deceived.

Ultimately there's no evidence which demonstrates that victim's funds were used in the manner agreed or prescribed by the businesses.

It's worth noting here that the payments made by Mr K did go via an intermediary, a then FCA regulated firm. Santander has previously argued that this means the CRM Code doesn't apply, as the transactions were between Mr K and the intermediary, rather than him and S. But I'm satisfied the payment journey here doesn't mean the CRM Code doesn't apply. Rather than setting out all the detail here, it makes sense to refer Santander to the published decision under reference DRN-4053598 (<https://www.financial-ombudsman.org.uk/decision/DRN-4053598.pdf>). Santander will see the circumstances are almost a mirror image of Mr K's and the resulting findings are the same.

I'm also not persuaded that the return of £15,000 at Mr K's request, when he changed his mind about level of investment at the start, outweighs all the other evidence to show this was a scam. Santander has questioned why a scammer would return so much money. The truth is we don't know and it's impossible to find out. But it's worth noting the money was sent to and returned by the intermediary, who were FCA regulated at the time. And so the scammers may not have been in full control of the funds at that point. It is also possible that at that stage S was doing all it could to appear legitimate in order to attract more victims.

The payment of some returns – a negligible amount here – also doesn't overturn the other persuasive evidence that this was a scam. The payment of small returns is a common feature of many investment scams.

Was this as a result of dishonest deception?

The lack of co-operation by the director of both companies with the liquidators and the disqualification of the director persuade me that the inducement of payment by the victims was as a result of the director's and his businesses' dishonest deception.

In the absence of any convincing evidence that S was carrying out investments for the victims, I believe that the payments meet the definition of an APP scam, as per the CRM Code, and Santander should refund Mr K's losses.

Whilst there is an on-going Police investigation, we haven't seen any reason why this would impact the ability to move forward with this complaint. As Santander has already reached an outcome under the CRM Code by saying it was a civil dispute then the R3(1)(c) provision is not applicable in this instance. Santander can't seek to delay a decision it's already made. The provision only applies before the business has made its decision under the Code.

So I don't think that Santander can further delay giving an outcome on this claim under the CRM Code. Based on all the evidence currently available, I believe that this claim meets the definition of an APP scam, as per the CRM Code. Because of this, Santander should refund Mr K's losses in full.

Do any exceptions to reimbursement apply here?

Santander has presented no evidence of an effective warning being provided, whether that be a written warning or a direct intervention. I find it highly unlikely Santander would be able to demonstrate that it met the standards for firms under the Code here. Even if it could, my finding would still more likely than not be that Mr K acted reasonably in moving past a warning – as opposed to ignoring one - given the apparent legitimacy of the investment. It also seems unlikely Santander would have uncovered the scam at the point payment was being made, but that isn't an exception to reimbursement under the Code. It would only mean the bank hadn't necessarily failed to meet its requirements.

Santander also hasn't demonstrated that Mr K lacked a reasonable basis for belief. Again, I believe it's unlikely it would be able to do so given the sophistication of the scam. The involvement of seemingly genuine companies, some of which were FCA regulated, would understandably have made the scam very convincing. And Mr K's interactions with the parties bear that out further. That £15,000 was returned to him when he changed his mind about the level of investment indicates that there was a lot that made the parties appear genuine.

As no exceptions to reimbursement can be fairly applied, it can be concluded that Santander ought to have refunded Mr K when he raised his scam claim. It's then fair and reasonable that it now compensates him to that effect.

Are there other remedies available to Mr K?

Santander has argued that Mr K should pursue a claim with the Financial Services Compensation Scheme (FSCS). It states the FSCS has confirmed it will accept claims against the intermediary.

It is true that the FSCS will consider some claims against the intermediary. But not all companies that used the intermediary are to be covered; some are excluded. There's nothing the FSCS has published to say claims linked to S will be included.

The Insolvency Service has also publicly stated that the activity S was engaged in was not FSCS protected, setting that out as one of the frequent deceptions S carried out, in that it lied to investors about being covered.

Even if Mr K were able to pursue a claim with FSCS, it and the Financial Ombudsman Service are separate organisations, and the rules governing whether a customer is eligible to receive compensation from FSCS are separate to those which apply to the Financial Ombudsman Service. FSCS will consider the claims submitted to it under the rules set for the FSCS by the Financial Conduct Authority.

Consumers might be permitted to pursue a claim to the Financial Ombudsman Service and the FSCS (should FSCS accept the consumer's claim) involving S, and at the same time.

However, should a consumer receive compensation from the FSCS relating to their claim against S, the consumer may be required to pay any further compensation to FSCS that they

receive from their bank (including as a result of any Financial Ombudsman Service award) relating to the consumer's complaint against S. Any questions relating to the terms on which compensation is paid by the FSCS should be directed to it.

Putting things right

Santander should now:

- Refund the £5,000 Mr K lost to the scam (minus the £262.50 he received back as returns);
- Pay interest on that sum at 8% simple per year, calculated from the date Santander declined the claim under the CRM Code to the date of settlement.

My final decision

I uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 April 2024.

Ben Murray
Ombudsman