DRN-4718084

The complaint

Mr A complains that Santander UK Plc ('Santander') won't refund the money he lost when he says he fell victim to an investment scam.

What happened

Mr A says that he was persuaded to make an investment with a company I'll refer to as H in my decision. H was a private rental development company which offered loan notes to investors to raise money for its projects. It was the parent company of a group of companies. Mr A says that sale and rent of H's assets would later generate company income which would be used to pay investors income and capital. In November 2019 Mr A transferred £20,000 to H from his Santander account.

H has gone into administration. Mr A believes the investment wasn't genuine and that he is the victim of a scam. He complained to Santander in September 2023 and said it failed in its duty of care to protect him. He cited the 'Quincecare Duty' and said Santander had reasonable grounds for suspecting Mr A's funds were being misappropriated and should have stopped the payment.

Santander didn't agree to reimburse Mr A. It said he had a civil dispute with H.

Mr A wasn't happy with Santander's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said there was insufficient evidence to conclude that H didn't intend to provide the agreed investment or make the returns it set out. This meant that she couldn't ask Santander to consider Mr A's complaint under the CRM Code.

Mr A didn't agree with the investigator's findings and said that H ran a sophisticated scam. Mr A's representative provided a detailed response which included documents and evidence in relation to H. I have considered all points raised and summarised the main ones below.

- Projects were completed to show legitimacy for future investments and because the intention was to extract future assets from the group.
- When administrators were appointed, H owed a total of £33.2 million, £2.1 million of which was owed to the company which developed the first development H completed. This property was purchased for £2.5m and an administrator's report says it was worth around £16m. Mr A said it was very unlikely H would spend more than the potential value of the property on it, so concluded that the maximum spend on the property would be £30.5m. Mr A said this meant £17m wasn't used for property development.
- In respect of another property Mr A said, "*it is safe to assume that the company would not have ran the project at a loss and as such with a break even value of £22m, at least £6m was not used for property development*."
- Another development doesn't appear in the subsidiary company accounts, suggesting the asset has been transferred away from the H group and investors have not received any of the proceeds of sale.

- A company that supposedly lent £2.1m to H didn't exist.
- The group's accounts have been manipulated to show loans as assets to present a more favorable investment opportunity.
- H's accounts show some concerning activities and clever accounting.
- H was trading while insolvent.
- H was concealing a bank account which is indicative of a scam.
- A director has removed an asset rich company from the group for his own benefit.

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, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank 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. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of APP scam, as set out in it, is met.

I have considered whether Mr A's claim falls within the scope of the CRM Code, which defines an APP scam as:

...a transfer of funds executed across Faster Payments…where:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

It is for Mr A to demonstrate that he is the victim of an APP scam.

To decide whether Mr A is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr A thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments, and whether this broadly aligned with what Mr A understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr A thought he was investing in a property development company. I haven't seen anything to suggest that he didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H and any linked businesses. The key information to this case is:

- H completed three different development projects. H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it. Mr A's own figures show that substantial funds were used for the intended purpose.

  I appreciate that Mr A believes H completed these developments to draw in investors. But no persuasive evidence has been put forward to make me believe this is the more likely scenario.

- Points raised by Mr A are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring his claim within the scope of the CRM Code. Whilst H may have, for example, misrepresented certain information, failed to cooperate with administrators, not filed accounts and paid high commissions to introducers, there is currently no evidence to say this was done with the intention of scamming investors. A lot of adverse inferences have been drawn here.

- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects. Whilst transactions have been investigated, there is currently no evidence that funds weren't used for the intended purpose.

- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that H intended to use Mr A's funds for a different purpose.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose H had in mind when it took payments from Mr A was different to Mr A's. So, I consider Santander acted fairly in not considering Mr A's complaint under the CRM Code.

If material new evidence comes to light at a later date Mr A can ask Santander to reconsider his fraud claim.

Mr A referred to the Quincecare Duty (and to a 2022 case that post dates the payment Mr A made) and said Santander should not have facilitated a payment when it had reasonable grounds to believe the payment was an attempt to misappropriate funds. He said Santander should have known there was an attempt to misappropriate funds here because unregulated brokers who were paid high rates of commission were involved with H. These introducers said the investment couldn't fail. There were also a large number of companies involved in the H group, some of which were used to pay 'loans' to directors.

I don't agree that at the time Mr A made his payment, Santander should have refused to process it. I need to consider what was known about H at the time rather than information that has come to light later. At the time Mr A invested, H was a legitimate company, other investors were receiving returns, and Mr A was given legitimate looking literature and a contract. And there was nothing in the public domain at the time to suggest there were any issues with H. Points raised by Mr A, including the commission paid to introducers, have come to light after Mr A's transactions were made, and after a detailed analysis of how H operated. So I'm not satisfied that in November 2019 Santander had reasonable grounds to believe the payments were an attempt to misappropriate funds.

I'm sorry to disappoint Mr A, as I know he has lost a significant amount of money. But I'm not satisfied that I can fairly ask Santander to refund him based on the evidence that is currently available.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 January 2025.

Jay Hadfield
Ombudsman