

The complaint

Miss Y complains that Santander UK Plc hasn't refunded her after she fell victim to a scam.

She is represented in her complaint by a claims management company which I'll refer to as C.

What happened

Miss Y came across an investment opportunity online. She saw an advert from a company offering investment in property development. Miss Y contacted the company and was told all about the investment. There are two relevant parties to introduce here, I'll call them R and A.

R was the company Miss Y found the advert for. R said it had opportunities to invest in property that was to be used by different councils for emergency and social housing. It explained it had a partner – A – which had secured agreements to provide rental properties for this purchase, and it was this investment that Miss Y would make her returns on.

A was the company that was securing contracts with local councils and sourcing many of the properties which were to be used and invested in.

Miss Y was attracted to the investment and decided to go ahead. She made three separate payments to R: £7,500 on 5 January 2022, £6,500 on 13 January 2022, and £5,000 on 10 March 2022. She signed agreements with R on each occasion. R then sent the money on to A.

Miss Y started to receive returns as promised. These were first received on 27 March 2022 and continued through to July 2022. She received a total of £2,983.41 (paid to her by R) during that time. But, after July, the payments stopped.

It was shortly after this that Miss Y, R, and some other involved parties, began to suspect A had been operating a scam, in the form of a Ponzi scheme. As more information was revealed over time, it became apparent that A had never secured the contracts with local councils it said it had. These were essential to the proposition A had put forward, and so there appeared to be evidence a scam had taken place.

Miss Y contacted C for help. It in turn contacted Santander to report the scam and request a refund. In doing so, it set out that there was no consideration that R had been operating a scam and, had instead, been unwittingly caught up in a Ponzi scheme being run by A.

C asked that Santander reimburse Miss Y as the victim of a scam, and in consideration of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. But Santander didn't reimburse Miss Y and so the complaint was referred to this service.

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 sorry to disappoint Miss Y, but I'm not upholding her complaint. I'll explain why.

I don't doubt that Miss Y has lost money here. It's clear she made an investment in good faith, and she hasn't seen the returns she was promised. Nor has her capital invested been

returned to her. Miss Y put a substantial sum into this supposed investment, and I realise this will have had a significant impact on her finances, as well as her emotional and mental health. But there aren't grounds here upon which I can hold Santander responsible for her loss.

The starting point at law is Miss Y is responsible for payments made from her account which are properly authorised. This is set out in the Payment Service Regulations (2017) and confirmed in Miss Y's account terms and conditions. There's no dispute here as to whether Miss Y authorised the payments; she's confirmed she did and we know they went to R as intended.

C, in bringing the complaint, has referred to the CRM Code as a means for seeing Miss Y reimbursed. It is true that the Code is in place to see the victims of scams refunded in most circumstances. But I'm not persuaded it applies to the payments made by Miss Y. That's because they don't meet the definition of an APP scam.

I can broadly accept, for the purposes of this decision, that A was operating a scam. There does appear to be some significant evidence of that being the case. But Miss Y didn't have a relationship or any direct dealings with A.

Miss Y dealt solely with R. It was R's adverts she saw online. It was R that talked her through the investment opportunity, what she would get in return, and how to proceed. It was also with R whom Miss Y signed agreements for the purposes of the investment, and it was R she sent money to and received returns from.

C has said there is no doubt as to R's legitimacy, instead accepting that R was itself a victim of the scam run by A. But this then means that Miss Y hasn't made payments for a fraudulent purpose which she otherwise believed to be legitimate.

The CRM Code states that it applies to payments where, "the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent".

There's no doubt Miss Y believed the other person – R – was legitimate. But the purpose of making that payment to R was legitimate too, and not fraudulent.

Miss Y had a genuine relationship with R. R had made no attempts to deceive her into parting with her money. Miss Y paid R directly, with the contractually reinforced understanding that it would be R that paid her returns, as indeed it did for several months. And she relied on R's expertise in sourcing the investment, and trusting in its due diligence, when deciding to invest.

C has stated that R was only ever established as a means of investing in A. But I disagree. It might be true that A was the only project R was involved with at the time, but it's clear R was set up as a business in its own right. It had its own accounts, was a properly registered company, and entered into contracts with clients. R was making (or intended to make) money from clients it introduced to A's investment scheme. Miss Y was one of R's clients.

C has referred to A being specifically mentioned in the contracts Miss Y signed. But I've seen no evidence of that being the case. Instead, Miss Y's contract is only with R and states the money would be loaned to R for its property business. There is no mention of A, or of specific projects.

I can accept that Miss Y believed it was ultimately A's projects that her funds would be invested in. And, as I've said, it might be that A was indeed operating a scam. But her funds were sent to R, with the purpose of them being invested through R. R was responsible for handling her money and paying her returns.

I know C disagrees with the position I've explained here. C instead believes it is the ultimate destination of the funds (that being A) that ought to be the determining factor in establishing payment purpose and whether a payment has been made as a result of a scam. My findings explain why that isn't the case. In addition, the Financial Ombudsman Service has discussed

this precise scenario with the LSB, and it agreed that the CRM Code would not apply to payments made in this way, where a legitimate business with whom all agreements/contracts were entered into, providing what it itself believed to be a legitimate service, is involved and where it was itself scammed.

Looking beyond the CRM Code, at a firm's responsibilities to protect customers from financial harm through fraud, I can still not find reason to say Santander ought to bear responsibility for Miss Y's loss. The reasoning here is broadly the same as above, given the payments wouldn't be defined as being made as part of an APP scam. But, beyond that, if Santander had perhaps intervened in the payments and questioned Miss Y, I'm not persuaded it could have uncovered that an APP scam was taking place. In making that finding I've considered the level of sophistication of the scam, and how persuasive it was.

As for attempts to recover funds, such attempts could only ever be made if a scam were established. And the attempts would only go as far as the account that received them, that being the one held by R. It's evident that, as a legitimate entity, it transferred the money on as intended, which meant there was nothing left to recover.

My final decision

I don't uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Y to accept or reject my decision before 29 November 2024.

Ben Murray
Ombudsman