

The complaint

X complains that Santander UK Plc did not refund a series of payments they lost to a scam.

What happened

X was introduced to an investment opportunity by a friend, and says most of the communication about it occurred over the phone. Over the course of around a month, they invested around £14,000 over a number of payments. X had access to a platform where they could see their returns building however after some time all the profits vanished and X could no longer get in contact with the investors. The friend that introduced them to the scam said they would help but also eventually disappeared.

Around a year later, X was contacted by an individual who said they could help recover the lost funds. X paid them £822.01 and another £25 in fees for their service but did not hear from them again. X raised a complaint with Santander, but they explained X had not raised a scam claim with them and this needed to be carried out first.

X referred the complaint to our service and our Investigator assessed it under the Lending Standard Board's Contingent Reimbursement Model ("CRM") Code as Santander have signed up to the voluntary code. Having done so, they felt Santander did not provide an effective warning as they should have done on the first two payments, as they posed a scam risk due to their value, so they felt a refund was due for them. But they did not think any later payments required a warning, so they felt Santander had met their obligation under the code in relation to them. They also felt X had not met their obligations under the code, as they did not have a reasonable basis to believe they were paying for a legitimate service, so they felt a reduction in the reimbursement of 50% was due.

Santander responded and accepted the findings, however X did not agree. In summary, they did not think Santander had met their obligations and did not want to accept anything less than £10,000.

As an informal agreement could not be reached, the complaint had been passed to me for a final decision.

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 Investigator for largely the same reasons, and I agree a partial refund is due in the circumstances. I'll explain why in more detail.

The starting point under the relevant regulations and the terms of X's account is that they are responsible for transactions they carried out themselves. However, as explained above, Santander are signatories to the CRM Code which gives additional protection to victims of

authorised push payment scams.

Santander had an obligation to provide an effective warning where it identified a scam risk during the payment journey. I've therefore reviewed the transactions in question to see if Santander should reasonably have identified a scam risk in the circumstances. Having done so, I agree that the initial two payments of £3,500 were unusual and so I think Santander should have provided an effective warning when X made them. Santander has accepted that they did not provide an effective warning for these payments and has agreed to reimburse X for these, so I see no reason to discuss this further.

The payments following this were of a lower value and I can see X had made other payments of similar values in the months leading up to the scam. So, I don't think Santander was required to give an effective warning for these and I think they have met their obligations under the code for them. I note there was another payment of £3,500 at the very start of the scam, but this payment bounced back into X's account, so I haven't considered this further.

What's left to decide is if Santander is able to rely on one of the exceptions to full reimbursement under the code. In this case, it is said that X lacked a reasonable basis for believing that they were dealing with a legitimate individual providing a legitimate service.

X was introduced to the individuals involved in the scam by someone they called a friend and had been in contact with for around a year. So, I can understand that there was a level of trust that their friend was introducing them to something legitimate. But I also have to consider that X did not fully know what the investment was meant to be for, they did not receive any documentation in relation to it such as a contract or explanation of how it would work, and X carried out no research on the company or the individuals they were dealing with before investing.

With this in mind, it is difficult to agree that X had a reasonable basis to believe the investment was genuine, as they had no real understanding of what it was, and they parted with over £14,000 seemingly without question. So, I think the exception to reimbursement can be relied upon, meaning the redress can be reduced by 50%.

Putting things right

It is my recommendation that Santander refund the first two successful transactions of £3,500, and that this can be reduced by 50%. 8% simple interest should also be added to the redress. Ordinarily this would be from the date of the declined claim to the date of settlement, but as X did not raise a claim, I think the date of the final response is reasonable, 22 November 2022.

If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell X how much it's taken off. It should also give X a tax deduction certificate if asked for one, so X can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold X's complaint in part and Santander UK Plc should pay the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 12 June 2024.

Rebecca Norris
Ombudsman