

The complaint

Mr C complains that Santander UK Plc did not refund a series of payments he lost to a scam.

What happened

Mr C found an investment for a company I'll call 'HS' for the purposes of this decision. HS provided a selection of loan notes for different building projects around Britain. Mr C says the brochures he received made him think HS was reputable and he made the following transfers from his Santander account to HS:

- 24/02/2020 - £10,000
- 11/05/2020 - £10,000
- 20/01/2021 - £10,000

Mr C received the initial returns he was expecting, in line with the agreement, that totalled £750. But eventually the returns stopped, and Mr C became aware that HS had entered administration in January 2022. After some time, Mr C felt he had been the victim of an investment scam and that HS never intended to fulfil their contract and provide him his returns.

Mr C raised a scam claim with Santander who provided a final response in August 2023. In this, they explained they felt this was a dispute between Mr C and HS rather than a scam. The complaint was referred to our service and our Investigator looked into it. They assessed the transactions under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code and having done so, they did not agree that they met the definition of an authorised push payment ("APP") scam. Instead, they felt it was more likely this was a high-risk investment that had failed. So, they did not think Santander needed to reimburse Mr C.

Mr C's representative did not agree with the outcome and raised a number of points in response, including that Mr C was vulnerable.

As an informal agreement could not be reached the complaint has 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.

Mr C's representative has provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service and as our rules allow, I will focus here on the points I find to be material to the outcome of Mr C's complaint. This is not meant to be a discourtesy and I want to assure Mr C I have considered everything he has submitted carefully.

It isn't in dispute that Mr C authorised the payments in question. Because of this the starting

position – in line with the Payment Services Regulations 2017 – is that he is liable for the transactions. But he says that he has been the victim of an authorised push payment (APP) scam.

Santander has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code below:

...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.

I've therefore considered whether the payments Mr C made to HS fall under the scope of an APP scam as set out above. Having done so, I don't think that they do. I'll explain why in more detail.

In order to determine if Mr C has been the victim of a scam, I have to consider if his intended purpose for the payments was legitimate, whether the intended purposes he and the company he paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company, in this case HS.

Based on the evidence available to me, it appears Mr C was intending for the funds to be invested in specific building projects around the country. He then expected to receive regular returns on his investment of 12%, with some additional bonuses as and when funds became available from completed projects. The paperwork he received prior to investing appeared to be professional and detailed. So, I see no reason why he would not have thought this was a legitimate investment.

I've gone on to consider whether HS's intended purpose for the payments aligned with what Mr C intended as I have set out above. I've seen evidence that three building projects were completed by HS. They had other projects ongoing, however these had to be sold to other developers after they entered into financial difficulty. I appreciate Mr C's representatives have said some Ponzi schemes will run alongside genuine businesses. But on balance, I think it's unlikely a scam company would have completed three large scale building projects at significant cost in order to entice more funds from investors. And I think this shows HS was a legitimate company involved in legitimate building projects.

Mr C's representatives have said HS paid unregulated introducers a high level of commission which in turn made the level of interest offered to investors unlikely. They felt that a credit event was inevitable in the circumstances. However, whether or not unregulated investors were used to introduce the investment does not indicate that HS set out to defraud investors of their funds, with no intention to invest the funds into building projects. And I don't think there is a correlation between the level of commission and Mr C being a victim of a scam in the circumstances.

It should be noted that the liquidator for HS has not provided any evidence to suggest they were acting fraudulently or operating a Ponzi scheme. They are still in the process of investigating a significant number of transactions made from HS to various subsidiary

companies, due to the way in which the HS network was set up. However, at the moment there is no indication that these transactions were made with the intention of hiding these funds and not using them towards development projects.

I appreciate that Mr C's representatives feel the payments themselves were unusual when compared to his regular account activity with Santander. However, I don't think this needs to be considered further, as I'm satisfied the payments don't meet the definition of an APP scam as set out above. In any event, even if they had been stopped by Santander at the time they were made, I don't think they would have had concerns about the purpose of the payments. As set out above, HS appeared to be a legitimate company involved in legitimate building projects around the UK and Mr C had received a significant amount of information in professional documentation. So, I don't think Santander would have had concerns over the payments.

On balance, I think HS's intended purpose for the funds aligned with Mr C's and nothing I have seen indicates to me that HS intended to defraud him. Instead, I think it's more likely this was a failed investment. So I don't think it meets the definition of an APP scam. And I think Santander acted reasonably when it treated the case as a civil dispute.

Mr C's representatives have also highlighted that he was vulnerable at the time of the payments. I've thought about this carefully, but as I do not think the payments meet the definition of a scam as per the CRM Code, I cannot consider them under the CRM Code. Therefore, an automatic refund due to issues around vulnerability cannot be considered further, as this can only be assessed under the Code.

It is possible that further evidence may come to light at a later date, which may indicate HS was operating a scam. Should such evidence come to light, then Mr C can complain to Santander again, and refer the matter to this office, should they not be happy with the outcome.

My final decision

I do not uphold Mr C's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 November 2024.

Rebecca Norris
Ombudsman