

The complaint

Mr G complains that Santander UK Plc won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In October 2020, Mr G was looking for an investment to increase the income he was earning from his savings and came across an advert for an investment company offering investments in renewable energy. He looked at the company's website and checked reviews for it online, before filling in his details on an enquiry form. He was then contacted by someone from the company and sent a brochure about the investment and a contract to sign. And Mr G then made a payment of £20,000 from his Santander account to a management company, who were to pass the funds on to the investment company.

Unfortunately, when Mr G tried to withdraw his investment after it was due to end, the contact details he had for the investment company didn't work anymore. He then reported the payment he had made to Santander as a scam and asked it to refund the money he had lost.

Santander investigated but said it felt this was a civil dispute between Mr G and the investment company, rather than a scam. So it didn't agree to refund the payment he had made. Mr G wasn't satisfied with Santander's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought the evidence available suggested this was a scam. And they didn't think Santander had established that it didn't have to refund Mr G. So they recommended it refund the money Mr G had lost, in full. Santander disagreed with our investigator, so the complaint has been passed to me.

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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer 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 customer even though they authorised the payment.

Santander is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the

victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

Has Mr G been the victim of a scam, as defined in the CRM code?

The relevant definition of a scam from the CRM code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier.

So in order to determine whether Mr G has been the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for the payment was legitimate, whether the purpose he and the investment company intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what he's told us, I'm satisfied Mr G made the payment here with the intention of investing with the investment company. He thought his funds would be used to provide small and medium sized renewable energy or property developers with short-term funding, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr G didn't think this was legitimate.

But I think the evidence I've seen suggests the true purpose the investment company intended for the investment scheme was different to the purpose Mr G understood.

Looking at the investment company's records on Companies House – it hasn't posted accounts since 2021 and doesn't appear to have been audited. The nature of the business was listed as development of building projects and, while the listing had also included activities auxiliary to financial intermediation by the time Mr G made his investment, this doesn't appear to be in line with the investment purposes Mr G was led to believe he was investing in. I also note the business has now dissolved as a result of a compulsory strike-off and it no longer has an online presence in the form of a website.

The FCA also provided a warning in October 2021 about the investment company providing financial services when it was not authorised to do so. The investment company was then taken over by another company in October 2022 (this change in ownership was communicated to investors in an email in October 2022). And the new ownership company told investors the FCA warning was due to clone companies impersonating the investment company – but this doesn't appear to be true. And there's no current evidence to suggest a clone company was in operation as the new ownership company claimed. While I appreciate this occurred after Mr G took out the investment, I think it is relevant to the overall picture of the investment company and its legitimacy as a business.

I appreciate Santander feels some of the evidence points towards the investment company being a legitimate business falling into financial difficulty. However, it's important for me to state that, to date, I've not been provided with any evidence to show that the investment company was operating in line with the way it described to, and agreed with, its investors prior to their investment. So based on the evidence I have, on balance, I don't think the intended purposes of Mr G and the investment company aligned and I think it's more likely this was due to dishonest deception on the part of the investment company.

So, I believe the circumstances here meet the definition of a scam from the CRM code.

Is Mr G entitled to a refund under the CRM code?

As I explained above, Santander is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Mr G fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

From what I've seen, the communication Mr G had with the investment company and the promotional material he received about the investment all appear to have been relatively professional. He was asked to sign a contract and sent a certificate confirming his investment, which also looked relatively professional. The way he was told the investment would work doesn't appear to have been suspicious and the returns he was told he would receive don't appear to have been too good to be true. And the investment company had been listed on the government's register of limited companies for a number of years, and the management company the payment went through was authorised and regulated by the FCA.

So I don't think there was anything about the investment that should have caused Mr G significant concern, or that Santander has established that he made the payment without a reasonable basis for belief that the investment was legitimate.

Santander has said Mr G was shown a warning when he made this payment, which said:

"If you've been cold-called or contacted out of the blue about an investment opportunity, this is highly likely to be a scam. Please check the company details thoroughly, including on the Financial Conduct Authorities website ([fca.org.uk](https://www.fca.org.uk)), before transferring any money. If you're at all nervous, please cancel this payment and call us immediately."

The CRM code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

But Mr G hadn't been cold-called or contacted out of the blue about the investment, so I don't think this warning will have seemed relevant to him. I also don't think this warning went into enough detail about what this kind of scam could look or feel like, the steps Mr G could take to try to avoid falling victim to this kind of scam, or the possible consequences of sending money to a scammer. So I don't think it was impactful or specific enough to be effective in his circumstances.

And so I don't think Santander has established that Mr G ignored an effective warning in relation to the payment.

I therefore don't think Santander has established that any of the exceptions to reimbursement under the CRM code apply here, and so it should refund the money Mr G lost in full.

My final decision

For the reasons set out above, I uphold this complaint and require Santander UK Plc to:

- Refund Mr G the £20,000 he lost as a result of this scam
- Pay Mr G 8% simple interest on this refund, from the date it initially declined his claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 April 2025.

Alan Millward
Ombudsman