

## **The complaint**

Miss S complains that Santander UK Plc ('Santander') won't refund the money she lost when she says she was the victim of a scam.

## **What happened**

Miss S is represented in this case but for ease I'll refer to Miss S throughout my decision.

Miss S says that she was looking for an investment and came across a company I'll refer to as B in my decision. B offered a three year bond. Miss S made a £10,000 online payment in October 2020 via N, a Financial Conduct Authority regulated firm that was described by B as a custodian of the funds. In October 2020 and 2021 Miss S received returns. She was later advised by B that N was entering into voluntary liquidation, and she has not received any further payments.

Miss S raised a scam claim with Santander through a representative in 2024.

Santander said Miss S had a civil dispute with B which is not covered by the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code), as Miss S paid a genuine company. Miss S was unhappy 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 Miss S was the victim of a scam and there was no other reason why Santander should reimburse her.

Miss S was unhappy with the investigator's findings, so her complaint has been passed to me to decide. She said that she should be reimbursed under the CRM Code.

## **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 broad terms, the starting position at law is that a business 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.

Santander is a signatory of the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

Santander say Miss S has a civil dispute with B because she paid N, which was a legitimate company that has now gone into liquidation. The involvement of N as a genuine intermediary does not exclude the possibility of the CRM Code applying. The CRM Code doesn't require the initial recipient of a payment to be an account owned by and for the benefit of the fraudster. Here I'm persuaded the funds were under the control of B at the point they arrived at the intermediary N.

Miss S does not appear to have a customer relationship with N. And I'm satisfied that N was acting on behalf of B and not Miss S. The money was out of Miss S's control and so the payment she made is capable of being covered by the provisions of the CRM Code.

But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I have set this definition out 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.*

The CRM Code is also explicit that it doesn't apply to private civil disputes.

The second limb of the definition is relevant to this complaint.

So, I can only consider Santander's liability under the CRM Code if I'm satisfied that the payments were made as part of an APP scam. To decide this, I'll consider a number of factors.

Firstly, I'll think about the purpose of the payment and whether Miss S thought this purpose was legitimate. I'll then need to consider the purpose the recipient (B) had in mind at the time of the payment and whether this was broadly in line with what Miss S understood to be the purpose of the payment. Lastly, if I determine that there was a significant difference in these purposes, I will need to be satisfied that the purposes were so substantially different as a result of dishonest deception.

I'm satisfied Miss S made the payment for what she thought was a legitimate investment. So I've gone on to consider whether B's reason for the payment aligned with Miss S's. I'm sorry to disappoint Miss S, but I haven't seen any evidence to indicate the payment reason was different or of dishonest deception.

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

- B was incorporated in 2016 and continues to be a registered company.
- At the time of payment there were multiple positive reviews in respect of B on a well known site.
- Miss S received returns for the first two years.
- I understand that B has transferred Miss S's bonds to stocks and shares, and she has provided a share certificate dated March 2022.
- A failed firm or investment, in and of itself, isn't sufficient to establish that the business or those operating it had a different purpose for the funds when they were obtained from the customer.

Taking all of these points into consideration as a whole, I'm not satisfied that there is sufficient evidence to say Miss S's funds weren't used in the manner agreed by B, or that the purpose B had in mind was different to Miss S's. Whilst Miss S doesn't appear to have received what she expected, I haven't been provided with any evidence on which I could reasonably conclude that the high bar required for fraud has likely been met.

That's not to say I rule out the possibility that the funds were obtained dishonestly, but there simply isn't enough evidence to support such a finding. That means I can't consider the provisions of the CRM Code, and I don't intend to ask Santander to refund the lost money.

If material new evidence subsequently comes to light Miss S should first provide it to Santander to consider. She may then be able to raise a new complaint with this service.

I've also thought about whether Santander could've prevented Miss S's loss when she made the payment as I would expect Santander to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears to be out of character. In situations where potential fraud is identified, I would expect Santander to intervene.

I'm not persuaded that the transaction was unusual given that Miss S made a payment of the same value from her account in May 2020. In any event, even if Santander had intervened, I don't consider it would have made a difference. I say this because the information that Miss S had at the time she made the payment was unlikely to have concerned Santander that she might be the victim of a scam. This includes B being a registered UK company with no concerning information at Companies House, and the payments being made through N, who was FCA regulated.

I'm really sorry to disappoint Miss S, as I know that she has lost a significant amount of money, but I'm not satisfied that I can fairly ask Santander to refund her.

### **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 Miss S to accept or reject my decision before 5 June 2024.

Jay Hadfield  
**Ombudsman**