

The complaint

Miss R complains that Santander UK Plc has not refunded the money she lost to what she believes was a scam.

What happened

Miss R had been through a very difficult period, personally and financially. Someone she knew suggested that they could help her to earn back some of the money she had lost by investing in stocks, they showed her evidence that they had already made significant sums by investing. So, in March 2022, Miss R sent this person £9,000 so they could help invest it on her behalf.

Miss R says that she saw no returns on this investment at all, and while she was given various excuses from the individual she had sent the money to as to why this was, she ultimately reported it as a scam in August 2023. Miss R says the person she sent the money to is now ignoring her and clearly has no intention of returning the money to her.

Santander looked into Miss R's scam claim, but ultimately it declined to refund her loss. Santander said that this was a civil dispute between Miss R and the person she sent the money to, and so did not consider that it should be held liable for her loss.

Unhappy with Santander's response, Miss R brought her complaint to this service and one of our investigators looked into things. But they agreed with Santander that this was most likely a civil dispute, and so Miss R not entitled to a refund of the payment made. Miss R remained unhappy, so, as the case could not be resolved informally, it's been passed to me for a 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 and having thought very carefully about Santander's actions, I agree with the findings set out by our investigator. I do appreciate how disappointing this will be for Miss R but, whilst I'm sorry to hear of what's happened, I don't think I can fairly hold Santander liable for her loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I understand that Miss R feels she has been scammed, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties and for a dispute to exist.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which Santander has signed up to and which was in force at the time Miss R made this payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether Santander therefore ought to reimburse Miss R under the provisions of the CRM Code.

But the CRM Code only applies if the definition of an 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 wording in the code is as follows:

"This Code does not apply to:

b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."

I've therefore considered whether the payment Miss R made falls under the scope of an APP scam as set out above. I've carefully looked over everything that both Miss R and Santander have said and provided, as well as information from relevant third parties. Having done so, I don't agree that it does meet the definition of an APP scam. I'll explain why in more detail.

I've seen nothing to suggest that the person who Miss R paid was not who he said he was, and while Miss R has said that she feels he set out to scam her out of her money, I've not seen enough to say for certain that this is what has actually happened here. Miss R has said that she was told she could double her money, but we've not been given anything to show exactly what the agreement was regarding any investment. So, I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that Miss R's acquaintance set out with an intent to defraud her.

And there are various aspects of what has happened here that do suggest this is much more likely to be a civil dispute than a scam as defined by the code. Specifically, I think it is worth noting that Miss R had a pre-existing financial relationship with the individual she believed would be investing for her, and she continued to make and receive payments apparently to and from this same person for several months after she made the payment she says was part of the scam. Miss R has also provided details of some messages she exchanged with this person in August 2023 where they refer to suggesting that they pay the £9,000 back in instalments. I appreciate that the money was not returned to Miss R, but the fact that her acquaintance continued to engage with her over such a long period does not suggest that they were intending to scam her.

Overall, I must make my decision based on what I think is most likely to have happened. And I haven't seen any clear evidence to persuade me that Miss R's acquaintance set out from the time of the relevant payment with the intent to defraud Miss R.

I know this will be a huge disappointment to Miss R. I appreciate how strongly she feels about this case, and that she has lost a significant amount of money here. But for the reasons I've explained above, I do not consider that the payment in dispute here is covered

under the CRM Code, or that it would be fair to hold Santander responsible for the money lost.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 5 December 2024.

Sophie Mitchell
Ombudsman