

## The complaint

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

## What happened

In 2020, Mr W saw an advert about an opportunity to invest in a company which leased cars. He was told his investment would be used to fund a vehicle which would then be leased out, that he would receive fixed interest payments each month, and that the vehicle he funded would be secured in his favour by way of a fixed charge registered at Companies House. And, after checking the company's website and online reviews, he decided to invest and made a payment of £14,000 from his Santander account to account details he was given for the company.

Over the next twelve months, Mr W received the monthly interest payments as he was told he would. And so he agreed to invest with the company again and made another payment of £14,000 from his Santander account to the company's account details. I've set out the payments Mr W made below:

Date	Amount
17 January 2019	£14,000
19 February 2020	£14,000

Mr W continued to receive the monthly interest payments he was told he would until January 2021, but the payments then stopped. Mr W became concerned at the explanations he was given for the payments stopping, so reported the payments he had made to Santander as a scam and asked it to refund the money he had lost.

Santander investigated but said Mr W had willingly made the payments and they were correctly authorised. It also said he had made legitimate payments for an investment and received credits from the company. So it didn't agree to refund the money he had lost. Mr W wasn't satisfied with Santander's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They said the evidence showed there was a clear discrepancy in alignment between the payment purposes Mr W and the company had in mind, so this met the definition of a scam. They also said they were satisfied Mr W had no reason to suspect the investment wasn't legitimate. So they recommended Santander refund his losses 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 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.

*Can Santander delay making a decision under the CRM code?*

Santander has argued that the payments Mr W made are the subject of an ongoing complex investigation and it would be fair to wait for the outcome of this investigation before making a decision on whether to reimburse him. But I disagree.

The CRM code says firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

But this provision only applies before the firm has made its decision under the code – it can't seek to delay a decision it's already made. And Santander only raised this after the case was referred to our service and it had already reached a decision on Mr W's claim in its final response letter to him, when it said he made a legitimate payment and this didn't appear to be a true scam. So I don't think Santander can now rely on this provision here.

And, in any event, the Serious Fraud Office (SFO) had been carrying out an investigation into the car leasing company and several connected companies. But that investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of former company directors with fraud, on its website.

The Lending Standards Board has also said that the code does not require a criminal test to have been met before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So as the SFO has reached an outcome on its investigation, and I don't think it's fair or necessary to wait until the outcome of the related court case – which isn't scheduled for more than two years, I don't think it's fair for Santander to delay making a decision on whether to reimburse Mr W any further.

*Has Mr W 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 W has been the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for the payments was legitimate, whether the purposes he and the company he paid 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 W made the payments here with the intention of investing with the car leasing company. He thought his funds would be used to purchase a vehicle which would then be leased out, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr W didn't think this was legitimate.

But I think the evidence I've seen suggests the car leasing company didn't intend to act in line with the purpose for the payments it had agreed with Mr W.

The correspondence Mr W received from the company said his capital would be used to fund a specific vehicle, and prominently highlighted that the vehicle he funded would be secured in his favour by way of a fixed charge registered at Companies House. But the Financial Conduct Authority (FCA)'s supervisory notice to one of the connected companies said that, while the companies had around 1,200 customers and had entered around 1,200 leases, they had only registered 69 vehicles at Companies House – which suggests the vast majority of the vehicles funded weren't secured in the way Mr W was told his would be.

The FCA also checked a sample of the vehicles the companies held against the DVLA database, and found a significantly larger proportion of these were second-hand than the companies' stated business model suggests or would support – as it relied on securing significant discounts on new vehicles, which wouldn't be available on second-hand vehicles.

It also found a number of leases started significantly before the vehicles were put on the road, and some vehicles not found on the database at all. And the FCA said it considered the companies' valuation of the vehicles it held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of one of the connected companies also said that the total number of loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 – or less than one car for every six loan agreements.

There's no record at Companies House of any charge in Mr W's favour over any vehicle with the company following his investment. And as I think the evidence shows the company was largely not carrying out this key aspect of the investments, I think it's safe to conclude that this wasn't done in Mr W's case either.

So I think the evidence shows the car leasing company wasn't acting in line with the business model and features of the investment it had led Mr W to believe he was making. And so the purpose the company intended for the payments Mr W made wasn't aligned with the purpose Mr W intended for the payments.

The SFO has also said that the former company directors are accused of providing those who invested with false information and encouraging people to pay in whilst knowing that investments were not in reality backed up by the cars they had been promised. So I think the discrepancy in the alignment of the payment purposes between Mr W and the company was the result of dishonest deception on the part of the company.

And so I think the circumstances here meet the definition of a scam from the CRM code.

*Is Mr W 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 W 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 W had with the car leasing company and the documents he received about the investment all appear to have been relatively professional and looked legitimate. The way Mr W was told the investment would work doesn't appear to be suspicious and the returns he was told he would receive don't appear to be too good to be true. And it appears the company had been operating for several years, one of the connected companies was authorised and regulated by the FCA, and a number of previous investors had received the returns they were told they would. So I don't think there was anything about the investment that should have caused Mr W significant concern, or that Santander has established that he made the payments without a reasonable basis for belief that the investment was legitimate.

Santander has also sent us a copy of the warning it says Mr W was shown before making the payments, which said:

***“Could this be a scam?”***

*If you're paying an invoice and the account details have changed, or the invoice is for a service you haven't ordered or received, it could be a scam.*

*We recommend always checking the payment details by phone or in person before making the transfer.*

*If someone is pressuring you, please stop now.”*

But this warning wasn't relevant to Mr W's circumstances or the type of scam he was falling victim to. So I don't think it was specific enough to be effective in his circumstances. And so I don't think Santander has established that Mr W ignored an effective warning in relation to the payments.

And so I 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 W lost in full.

***Redress***

As Mr W received a number of monthly interest payments back from the car lease company, I think it would be fair for these payments to be deducted from the amount Santander has to refund him.

I also don't think any action I would've expected Santander to take would have prevented Mr W making these payments, as I don't think any of the information I would've reasonably expected it to have uncovered at the time of the payments would've uncovered the scam or caused it significant concern. And I don't think it was unreasonable for Santander to initially decline Mr W's claim under the CRM code, as it wasn't clear from the evidence available at the time that this was a scam.

But the CRM code allows firms 15 days to make a decision after the outcome of an investigation is known. So I think Santander should have responded to Mr W's claim and refunded his losses under the CRM code within 15 days of the SFO publishing the outcome of its investigation. And so I think Santander should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date of settlement.

As the car leasing company is now under the control of administrators, it's possible Mr W may recover some further funds in the future. So, if it wishes, I don't think it would be unreasonable for Santander to request Mr W complete an indemnity confirming he'll return any funds recovered in future to Santander. But this will be for Santander to arrange separately from the settlement of this complaint.

### **My final decision**

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

- Refund Mr W the payments he made as a result of this scam, less the payments he received back from the companies
- Pay Mr W 8% interest on that refund, from 15 days after 19 January 2024 until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 August 2024.

Alan Millward  
**Ombudsman**