

The complaint

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

What happened

Mr G was looking to invest and found a company I'll call 'HS' for the purpose of this decision. HS had several different building projects they were providing investments for in the form of loan notes. Mr G agreed to take out a loan note for £25,000 and made transfers from his Santander account for the amount on 26 and 27 January 2021. However, HS went into administration in December 2021.

Mr G felt he had been the victim of an investment scam and that HS set out to defraud him. He raised a scam claim with Santander who issued a final response in which they felt it was more likely this was a civil dispute rather than a scam, and they didn't agree to reimburse Mr G. As a result, he referred the complaint to our service.

Our Investigator looked into the complaint and reviewed it under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Having done so, they agreed it was more likely a civil dispute between Mr G and HS. On balance, they did not think the evidence showed HS never intended to act in line with the agreement or pay the funds described in the contract. And instead, they felt it was more likely this was an investment that failed, so they didn't agree Santander needed to refund Mr G.

Mr G's representative disagreed with the findings and provided a detailed response to our findings. They raised a number of points, including that HS took money from investors knowing they were unable to provide the investment opportunity from January 2019, as they were trading insolvently from January 2019 onwards. And that HS manipulated their accounts so they appeared more profitable than they were. As well as other issues.

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 G's representatives have 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 G's complaint. This is not meant to be a discourtesy to him and I want to assure him I have considered everything he has submitted carefully.

It isn't in dispute that Mr G 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 payment Mr G made to HS falls under the scope of an APP scam as set out above. Having done so, I don't think that it does. I'll explain why in more detail.

In order to determine if Mr G has been the victim of a scam, I have to consider if his intended purpose for the payments were 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.

Based on the evidence available to me, which is limited in relation to Mr G's specific situation, it appears he was intending for the funds to be invested in a building project. He then expected to receive returns on the maturity of his investment of around 10%. I have not seen any of the paperwork that Mr G was specifically provided by HS. But I have seen the brochures that they produced relating to the investments which appeared to be professional. I can see HS was on Companies House and had been incorporated since 2011. So, I see no reason why Mr G would not have thought this was a legitimate investment at the time.

I've gone on to consider whether HS's intended purpose for the payments aligned with what Mr G intended as 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. On balance, I think this shows HS was a legitimate company involved in legitimate building projects and 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.

I haven't been provided with evidence following an investigation by an external organisation which concludes that HS was operating fraudulently. Administrators have referred to completing a bank account analysis looking at the movement of funds within the company's bank account. This analysis has been completed but no further details were provided in the most recent update.

I'm aware that HS hasn't filed audited accounts. I have also noted the inaccuracies highlighted by Mr G's representative in respect of accounts that have been filed. But I'm not persuaded this evidence goes far enough to demonstrate that HS operated fraudulently. In the absence of the kind of evidence I have referred to above, I consider that Mr G has provided evidence of financial mismanagement but not of an intention to defraud.

Mr G's representatives have said HS paid unregulated introducers a high level of

commission and this was a misappropriation of investors' funds. 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 while I have not seen evidence of the levels of commission paid to introducers, I don't think there is a correlation between the level of commission and Mr G being a victim of a scam in the circumstances.

On balance, I think HS's intended purpose for the funds aligned with Mr G'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.

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 G can complain to Santander again, and refer the matter to this office, should he not be happy with the outcome.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 13 December 2024.

Rebecca Norris
Ombudsman