

## **The complaint**

Mr T complains that Santander UK Plc ('Santander') won't reimburse the money he lost when he says he fell victim to a scam.

## **What happened**

Mr T says that he was introduced to an investment opportunity with a company I'll refer to as H in this decision. H was a private rental development company which offered loan notes to investors to raise money for its projects. Mr T made a payment to H of £50,000 on 27 February 2019 and a further payment of £20,000 on 16 September 2019. He understood that he would receive returns twice a year for the duration of the loan and the return of his capital at the end of the loan period.

Mr T didn't receive the returns he expected, and H went into administration in January 2022. Mr T believes the investment wasn't genuine and that he is the victim of a sophisticated scam. He complained to Santander in September 2023 and said it failed in its duty of care to protect him.

Santander didn't agree to reimburse Mr T. It said Mr T has a civil dispute with H so it can't be held responsible for his loss.

### *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. He said there was insufficient evidence to conclude that H didn't intend to provide the agreed investment or make the returns it set out. This meant that he couldn't ask Santander to consider Mr T's complaint under the CRM Code.

Mr T didn't agree with the investigator's findings and asked for a review by an ombudsman, so his complaint has been passed to me to decide. He provided a lot of documentation from H including promotional material, agreements, updates, and administrator communications and asked me to review the following points:

- The investigator applied the wrong threshold test for intervention by Santander when considering the application of the CRM Code. The investigator said the CRM Code only applies where the payer's payment meets the CRM Code definition of an APP scam. But the threshold test for triggering action by the bank is whether there was an identifiable scam risk at the time the payment was made. Mr T quoted a section of the CRM Code that says, "Firms should take appropriate action to identify Customers and payment authorisations that run a higher risk of being associated with an APP scam". Here, Mr T said there was an identifiable APP scam risk which Santander failed to act on.
- The investigator also applied the wrong threshold test for intervention by Santander when considering the application of the PAS Code (PAS 17271:2017). The threshold test is identification of a risk of harm rather than identifying an actual fraudulent transaction. Mr T made high value payments that were out of character so Santander should have recognised a scam risk.
- The investigator failed to give adequate weight to the information provided to demonstrate that H was operating a Ponzi scheme. Too much weight was given to

indicators H was running a legitimate business and too little weight to the implausibility of the returns offered (which Mr T set out in detail based on information H provided in prospectuses) and the required cashflow to generate those returns. H would not see a return from a site until it was sold or refinanced but had to pay commission, interest, and bonuses in the short term. Mr T said the logical explanation was that H was using new investor funds to make payments to other investors.

- Administrators for H haven't offered any conclusions on the inter group transactions that are being investigated and certainly haven't concluded there was nothing irregular going on.
- H hasn't filed accounts since 2018. The logical inference is that auditors were unable to sign off H's accounts.
- Mr T said the purpose of the genuine business conducted by H was to give the project legitimacy and encourage investment.
- Given the high rates of return offered and the commission paid to introducers, H would have to generate huge returns which make the rates offered implausible. The logical conclusion is that investor funds were used to make payments to other investors.
- Santander should reimburse Mr T based on his vulnerability.
- The loss of his funds has had a huge impact on him financially and emotionally.

### **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.

#### *Transaction one – 27 February 2019*

This payment was made prior to the introduction of the Contingent Reimbursement Model Code (CRM Code) on 28 May 2019. The CRM Code can't be applied retrospectively, so it doesn't apply to this transaction.

Santander should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things) though. And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

Having reviewed Mr T's account activity in the 12 month period before this payment I'm satisfied that it was unusual and out of character so Santander should have discussed it with Mr T. I note the payment was made by telephone banking so it's clear a conversation took place. Santander hasn't been able to locate a call recording.

But I'm not persuaded that if Santander asked Mr H the kind of questions I'd expect it to in February 2019, it would have had any concerns or that the payment would not have been made. H was a legitimate company that at the time the payment was made and was paying returns to other investors. Detailed documentation was provided and there was nothing in the public domain at the time to suggest Santander should have been concerned that Mr T might be falling victim to a scam. Many of the concerns Mr T has raised, including high commissions paid to introducers, have come to light after the payments left Mr T's account.

Santander ought to have asked Mr T questions to understand the nature of the payment and to ensure he had researched the investment opportunity before committing funds. But it

wasn't for Santander to analyse in detail the documentation provided to Mr T or to provide investment advice.

*Transaction two – 16 September 2019*

Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Under this code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. 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 considered whether Mr T's claim falls within the scope of the CRM Code, which defines an APP scam as:

*...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) (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

It is for Mr T to demonstrate that he is the victim of an APP scam.

To decide whether Mr T is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr T thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments, and whether this broadly aligned with what Mr T understood to have been the purpose of the payment.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr T thought he was investing in a property development company. I haven't seen anything to suggest that he didn't consider this to be a legitimate purpose.

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

- H completed three different development projects. H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.  
  
I appreciate that Mr T believes H completed these developments to draw in investors and give the appearance of being legitimate. But no persuasive evidence has been put forward to make me believe this is the more likely scenario.
- Points raised by Mr T are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring his claim within the scope of the CRM Code. Whilst H may have, for example, offered high rates of return, failed to cooperate with administrators, and paid high commissions to introducers, there is currently no evidence to say this was done with the intention of scamming investors. A lot of adverse inferences have been drawn here.
- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects. Whilst transactions have been investigated, there is currently no evidence that funds weren't used for the intended purpose.

- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that H intended to use Mr T's funds for a different purpose.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose H had in mind when it took Mr T's payment was different to his. So, I consider Santander acted fairly in not considering Mr T's complaint under the CRM Code.

If material new evidence comes to light at a later date Mr T can ask Santander to reconsider his fraud claim in respect of the September 2019 transaction.

Mr T says the investigator misapplied the CRM Code. The CRM Code is clear that subject to certain exceptions a customer "who has been the victim of an APP scam" should be reimbursed. Likewise, the provisions in respect of reimbursement when a customer is vulnerable apply when, at the time of becoming victim to an APP scam, that customer couldn't have protected themselves from the scam they fell victim to. So, reimbursement under the CRM Code, whether because of vulnerability or because an exception to reimbursement doesn't apply, is dependent on the definition of an APP scam being met.

The code includes other provisions relating to the detection and prevention of scams. Mr T's representative has quoted from the section of the CRM Code that relates to the detection of payment authorisations that run a higher risk of being associated with an APP scam. The section on prevention refers to the warnings customers should be given if a firm identifies an APP scam risk in a payment journey. These provisions tie in with Santander's wider obligation to be on the look-out for unusual transactions or other signs that might indicate that its customer was at risk of fraud (among other things), and the PAS Code, which I have referred to above. I have also set out why I don't consider Santander would have had any concerns at the time the payment was made.

I'm really sorry to disappoint Mr T, as I know he has lost a significant amount of money. But I'm not satisfied that I can fairly ask Santander to refund him based on the evidence that is currently available.

### **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 Mr T to accept or reject my decision before 26 December 2024.

Jay Hadfield  
**Ombudsman**