

## **The complaint**

Mr W complains that Santander UK Plc (“Santander”) didn’t do enough to protect him when he paid what he now believes was a scam, and that it won’t refund the money he lost.

## **What happened**

In September 2018, Mr W invested £10,000 into a property development company I’ll call ‘H’. He received credits into his account of just under £2,800. And he invested again in October 2019, again for £10,000. Seemingly, he received no further credits.

Mr W complained to Santander. He believed Santander failed in its duty of care and he thinks it should refund him the losses, together with compensation.

Santander didn’t uphold the complaint. In summary, it said H was a legitimate company, that Mr W chose to send further funds despite having only received partial returns, and that the payments weren’t unusual for the account.

Unhappy with this, Mr W brought his complaint to our Service. Our investigator considered the complaint. He didn’t think there was enough information to conclude that H wasn’t a legitimate business that failed and went into administration. So he didn’t think Santander needed to take any action.

As Mr W disagreed, the complaint has been passed to me to decide.

## **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 in 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 or reasonable for the bank to reimburse the customer even though they authorised the payment.

Santander is a signatory of the Contingent Reimbursement Model (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.

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 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, 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 payment was legitimate, whether the purposes he and the property development company intended were broadly aligned and, if they weren't, whether this was the result of dishonest deception on the part of the company.

I'm satisfied that Mr W made the payment with the intention of investing with the property development company, for which he'd receive returns on his investment. But I'm not persuaded that the property development company intended a different purpose for the payment, or that it wasn't broadly aligned with Mr W's intended purpose.

From what I've seen, the property development company completed three different development projects in three different cities across the UK. It also worked on a number of other developments which it sold to developers when it experienced financial difficulties. I wouldn't expect a company that intended to scam investors to complete these projects as these would have involved a large amount of investment and management. So, I think the completion of these projects strongly suggests the property development company was attempting to operate as a legitimate business.

There have been suggestions of poor business or financial management around the property development company. But while this, and other irregularities or poor business practice, may suggest the property development company wasn't acting as I'd expect a professional business to, this isn't the same as operating a scam. And I don't think they show that the company never intended to use investor's funds for development projects.

I've not seen anything from the administrators of the company which suggest the company was operating a scam or that the transactions carried out by the company and other connected companies were done with any intention other than putting investor's funds towards development projects. And I haven't been provided with evidence of any investigation by an external organisation which concludes the company was operating a scam.

So, I'm not persuaded that the available evidence is sufficient to safely conclude that the purpose the property development company intended for these payments was different than the purpose Mr W intended. And so, I don't think Santander has acted unreasonably in saying the circumstances here don't meet the definition of a scam from the CRM code, and in not agreeing to refund the money Mr W lost from his payments as a result.

I've thought about what would have happened had Santander intervened with the payments at the time of them being made. But, based on the above, I don't think Santander could have uncovered information, especially through proportionate enquiry in relation to the payment, that would have led to significant doubts about the legitimacy of the property development company. And, with that in mind, nor do I think Mr W could have uncovered such information at the time either. So, I don't see how any reasonable intervention from Santander would have made a difference to Mr W's decision to invest.

It's possible that material new evidence may become available at a future date, which suggests that the property development company did take Mr W's payments using dishonest deception. If that happens, Mr W can ask Santander to reconsider its claim and, if not satisfied with its response, bring a new complaint to our Service.

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

**My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 January 2025.

Melanie Roberts  
**Ombudsman**