

## The complaint

Mrs R complains that Santander UK Plc hasn't refunded him after she reported falling victim to a scam.

## What happened

Mrs R was introduced to a form of investment with a company I'll refer to as B. She was referred to them by a broker presenting investment opportunities and believed B was backed by an FCA regulated firm.

Mrs R was talked through what the investment involved. B claimed to have designed and built an algorithm to place bets on sports events. The algorithm was said to be self-learning and would develop and refine over time.

Mrs R was persuaded to invest on the understanding she'd be agreeing to a mini bond, with returns to be paid monthly.

She decided to invest £10,000 in March 2019 with an account held with a different bank and stated to receive monthly returns. In June 2019 she decided to invest a further £10,000, this time sent from her Santander account, and again started to receive returns. A final payment was then made in October 2019, again from an account held elsewhere.

In March 2020 the payment of returns stopped because sports fixtures around the globe halted with the pandemic. The director later explained, as fixtures started up again, that results were too erratic and unpredictable for it to make sense to continue betting, at least until a degree of normalcy returned. And so payments to customers like Mrs R remained suspended.

B was still seeking more investment and assured existing customers that activity and returns would begin again as soon as possible. The director of B was in regular contact with clients. But payments never resumed. And, as time went by, suspicions started to grow as to whether B was a legitimate enterprise.

B later entered administration, with an administrator being appointed in May 2022. They produced a report in December 2022. Amongst other things, it said:

*'while it was initially assumed that (the algorithm B claimed to have developed) was a piece of software, we have since received confirmation that it is actually a very short set of written trading rules.'*

*'we have seen no evidence that (the algorithm B claimed to have developed) performs as described in the Information Memorandum.'*

Mrs R reported that she'd been the victim of a scam to Santander. It considered her claim but said it couldn't help. It believed Mrs R had been dealing with a legitimate firm that had failed, and so hers was a civil dispute; not a case of her having been scammed.

Mrs R didn't agree with Santander's response and so brought her complaint to our service. One of our investigators considered the complaint and recommended it be upheld with the payment made from Mrs R's Santander account to be refunded, minus any returns received.

Whilst Mrs R accepted, Santander did not. It maintained that Mrs R had a civil dispute with B, and disagreed she'd been the victim of a scam.

## 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, I'm upholding it. I'll explain why.

Broadly speaking, the starting point at law is that Santander is expected to process payment instructions it receives which are properly authorised by Mrs R. Mrs R is then generally expected to be responsible for such payments. This is set out in the Payment Service Regulations (2017) and echoed in the account terms and conditions.

But that isn't the end of the relevant considerations in a complaint like this. There are times where businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Where the consumer 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 consumer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's Contingent Reimbursement Model ('the CRM Code'), which Santander has signed up to.

The CRM Code provides additional protection from APP scams, but only in certain circumstances. For example, the CRM Code only applies where the victim's payment meets the CRM Code's definition of an APP scam.

Santander's position has been that the payment Mrs R made doesn't meet that definition because it believes B was a genuine business. Whilst that would be a reason for the payment to not be covered by the Code, I don't agree with Santander's position here; I'm satisfied that Mrs R has fallen victim to a scam.

The Code states it covers payments where a customer sends money to, "*another person for what they believed were legitimate purposes but which were in fact fraudulent.*" And so, for the Code to apply, there must be a misalignment of intended purpose between the customer and the payee. And that misalignment must be a result of dishonest deception on the part of the payee.

Mrs R believed she was investing in a mini bond with B and that her funds would be used to gamble on sports fixtures in order to generate returns. That gambling activity was to be powered by an algorithm created and maintained by B. There's no dispute as to what B was promising it would do or how. But there's little evidence to suggest it was ever able to deliver what it said it would or that it was operating as it said it would.

The fundamental principle of B's offering was gambling through the use of the algorithm, described as '*being based on artificial intelligence which constantly refines and innovates the underlying assumptions and strategies*'. But the administrators (and other parties that might be connected to investigating B's activities) have found no evidence (that this service has been made aware of) that such an algorithm ever existed, instead finding only a basic set of written rules.

The administrator was also able to reveal as much as 41% of payments (nearly £3.5 million out of nearly £8.6 million invested, as per 31 August 2019) to investors had been paid out to introducers to the scheme. That is an incredibly large proportion of funds that were meant to be used to generate returns. Such a high percentage is a common indicator of a Ponzi scheme being in operation. Investors were seemingly completely unaware that such

rewards were being paid out – there's no mention of it in any of B's literature this service has seen – further suggesting B was not using client funds for the expected purposes.

The account of B – which this service has had sight of – show there were *some* payments to gambling companies. But not anything like the proportion that might have been expected of B's supposed business model. And the liquidator's report further confirms, '*there were considerable losses of bond holder capital whilst B was purportedly placing bets using (the algorithm).*' Given B's promises to investors, this further supports that it was not using funds for the purposes intended by the payees.

I have seen little to no evidence that B was operating in the way that it promised to, or that its intended purpose for payments received aligned with that of investors. It is true that Mrs R, amongst others, received returns from B for some time. However, this is a common feature of a Ponzi scheme, with small payments made to 'investors' for as long as possible to maintain the deception.

Santander has suggested to this service that Mrs R's receipt of payments suggests she was involved in introducing people to the Ponzi scheme. It went on to say that, '*this would make it an illegal scheme and a matter for the police to investigate, deeming it a civil dispute.*'

This suggestion from Santander is unfair and unreasonable for a few reasons. First, there's no evidence to suggest the returns Mrs R received were rewards or a form of commission for introducing others to the scheme. Mrs R has confirmed she never introduced anyone to B.

Second, even if Mrs R did receive some form of commission that wouldn't necessarily discount her claim. It would have to be evidenced that she had come to know (or perhaps ought to have known) that B was running a Ponzi scheme. There's nothing to suggest that was the case.

Third, the statement relies on Santander then accepting that B was indeed operating a scam – a Ponzi scheme. And the LSB has been clear that victims of such schemes do benefit from the protection of the CRM Code. And so it would be responsible for reimbursing Mrs R.

With all the above in mind I'm satisfied the second payment made by Mrs R is covered by the CRM Code.

The Code does allow for Santander to potentially rely on an exception to reimbursement, if it can evidence it applies. The two most relevant exceptions that *might* apply can be summarised as:

- Mrs R ignored an effective warning given by Santander at the time she made her payment;
- Mrs R didn't have a reasonable basis for believing she was making a legitimate payment for legitimate purposes.

I've not seen any evidence of warnings given by Santander and so it can't rely on the exception. In any case, it would seem more likely than not that any finding would be that Mrs R fairly and reasonably moved past any warning that *might* have been provided, given the apparent sophistication of the scam.

It's also not suggested Mrs R lacked a reasonable basis for belief. And I've seen nothing within the evidence I've been presented to suggest that she did. She was introduced by a trusted third-party and, as commented on earlier, the scheme appears to have been sophisticated (as reflected by Santander's (and other firms) insistence that B was a genuine company).

I've seen no persuasive evidence and argument to say any exception to reimbursement can be fairly applied. I'm then satisfied that Santander ought to have reimbursed Mrs R the £10,000 lost when she raised her scam claim. It's then fair and reasonable that it compensates her to that effect now.

### **Putting things right**

On Mrs R's acceptance, Santander must:

- Refund the £10,000 Mrs R lost to the scam from her Santander account (minus the £800 in returns linked to this payment); *and*
- Pay interest on that sum at 8% simple per year, calculated from the date the claim was declined to the date of settlement.

### **My final decision**

I uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 27 November 2024.

Ben Murray  
**Ombudsman**