

The complaint

Ms Y complains that Santander UK Plc hasn't refunded her after she fell victim to a scam.

What happened

The background to this complaint is well-known to both parties and so I'll only provide a summary of key events here.

Ms Y was contacted by an investment broker in August 2020. Ms Y's relative had used the broker before and had described a positive experience. And Ms Y saw adverts for the broker in a finance magazine. She also saw the broker's website, which looked very professional.

Ms Y discussed potential investment options with the broker. One of the options was an investment opportunity with a company I'll call S. It was offering an ISA wrapped bond with a 9% return on investment. Ms Y was interested and sought further information.

After being contacted by S, with her details having been passed on, and the full scope of the investment being explained – complete with the provision of an investment brochure – Ms Y decided to invest. She sent £10,000 at S' instruction. The money was sent to an intermediary business that was FCA regulated. And Ms Y's investment was then passed from the intermediary to S.

Although all appeared genuine at the time, and some small returns were received over the months that followed, things started to go wrong with S. The promised returns went unpaid, there were supposed buyouts, a lack of communication, and ultimately the scheme collapsed.

Ms Y told Santander what had happened, seeking a refund of her loss. It considered the claim but told Ms Y it wouldn't refund her. That was on the basis it believed Ms Y hadn't been scammed, but instead had a civil dispute with S as a result of a failed investment.

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.

In broad terms, the starting position at law is that a business is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

There are, however, some situations where we believe that 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 characteristics of the victim's payment meets the CRM Code's definition of an APP scam.

Is this a scam as per the CRM Code?

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: *"another person for what they believed were legitimate purposes, but which were in fact fraudulent."*

In order for this to apply, there are a number of requirements of which we'd need to be satisfied as well as information we'd need confirmation of. Firstly, we need to consider the purpose of the payment and whether Ms Y thought this purpose was legitimate.

We then need to consider the purpose the recipient had in mind at the time of the payments and whether this was broadly in line with what Ms Y understood to be the purpose of the payment.

Lastly, if we determine that there was a significant difference in these purposes, we'd need to be satisfied that the purposes were substantially different as a result of dishonest deception.

What was the purpose of the payment? Did Ms Y think this was legitimate?

From what we know, Ms Y was making the payment to S in return for a fixed rate bond to be invested in property development. I can't see anything which would suggest that Ms Y didn't think this was legitimate.

What was the purpose the recipient had in mind? Was that in line with what the consumer thought?

When looking at the purpose question here, I've taken account of the wider circumstances surrounding the business and its director links and other businesses. After reviewing all the available evidence on cases linked to S (and the linked businesses) these are the key findings:

- The director of S and the linked businesses has been disqualified as a director on Companies House for eight years by the secretary of state.
- The director has failed to provide liquidators with accounting records for liquidated businesses and has said he will not be providing these.
- The FCA issued a warning about the linked businesses in March 2020 saying they were providing financial services without authorisation.
- Despite saying S had assets of £34m, it never filed any accounts and wasn't independently audited at any point. There was a further company that took over S which also never filed any accounts, and the director was the same person. This company contacted investors to say their money would be safe despite the FCA regulated intermediary going into liquidation, and then it cut contact with all investors.
- Police Scotland are now investigating the director, S, and other linked companies.
- In some instances, S' brochures claimed to have agreements in place with Edinburgh City Council to lease local authority properties – ECC have now confirmed to our service that it had no record of any such contract or agreement with S or the director.
- There is no evidence to suggest S or the linked companies were operating legitimately. There is no evidence of any investments made. Some consumers received small monthly returns while others received no returns at all.
- The Insolvency Service has also made comments following its investigation into S and the linked companies confirming investors were routinely deceived.

Ultimately there's no evidence which demonstrates that victim's funds were used in the manner agreed or prescribed by the businesses.

It's worth noting here that the payments made by Ms Y did go via an intermediary, a then FCA regulated firm. Santander has previously argued that this means the CRM Code doesn't apply, as the transactions were between Ms Y and the intermediary, rather than her and S. But I'm satisfied the payment journey here doesn't mean the CRM Code doesn't apply. Rather than setting out all the detail here, it makes sense to refer Santander to the published decision under reference DRN-4053598 (<https://www.financial-ombudsman.org.uk/decision/DRN-4053598.pdf>). Santander will see the circumstances are almost a mirror image of Ms Y's and the resulting findings are the same. It has also already been provided with a copy of this decision.

S confirmed receipt of Ms Y's funds within days of them being sent. This supports there was a pre-existing relationship for funds to be moved through the intermediary and that there was no involvement by Ms Y. And it confirms that those funds were moved through quickly, without Ms Y having any control of them.

Furthermore, this service has considered a large volume of complaints involving S, and so have been able to satisfy ourselves that the quick onward transmission of funds was the modus operandi and an existing relationship between the intermediary and S was well-established.

The payment of some returns also doesn't overturn the other persuasive evidence that this was a scam. The payment of small returns is a common feature of many investment scams.

Was the difference in purpose the result of dishonest deception?

The lack of co-operation by the director of both companies with the liquidators and the disqualification of the director persuade me that the inducement of payment by the victims was as a result of the director's and her businesses' dishonest deception.

In the absence of any convincing evidence that S was carrying out investments for the victims, I believe that the payments meet the definition of an APP scam, as per the CRM Code, and Santander should refund Ms Y's losses.

Do any exceptions to reimbursement apply here?

There are two potential exceptions to reimbursement that Santander might rely on to deny a claim under the Code. Though it's made little argument that either should apply, I'll provide some brief findings on those potential exceptions. They can be summarised as:

- The customer ignored an effective warning given by the business at the time payment was being made; *and*
- The customer made a payment without holding a reasonable basis for believing it was being made to a legitimate party for a legitimate purpose.

Santander has presented limited evidence to show an effective warning was presented to Ms Y. It's said an investment scam warning was shown and sent us evidence of that warning. Unfortunately, part of the warning seems to have been cut-off when sent to this service, so I've been unable to see the full thing. However, there is enough there for me to be able to say it fails to meet the standards for firms regarding effective warnings, which are set out in the Code.

The warning doesn't bring investment scams to life as it fails to address many of the key features, meaning it lacks impact and isn't specific enough. It also doesn't give a good idea of how Ms Y might have protected herself, or the consequences of proceeding with the payment.

I find it highly unlikely Santander would be able to demonstrate that the effective warnings exception could fairly and reasonably be relied upon here even if it could demonstrate or otherwise argue that a warning that met the standards for firms was presented. That's because the scam here was very convincing and sophisticated, meaning Ms Y would reasonably have moved past the warnings, as opposed to having ignored one, and the exception would still not apply.

It also seems unlikely Santander could have uncovered the scam at the point payment was being made, but that isn't an exception to reimbursement under the Code. It would only mean Santander hadn't necessarily failed to meet its requirements, and that no party was at fault.

Santander also hasn't demonstrated that Ms Y lacked a reasonable basis for belief, though it has suggested it thinks that is the case. Again, I believe it's unlikely Santander would be able to demonstrate the reasonable basis for belief exception could fairly and reasonably be applied, given the sophistication of the scam. The involvement of seemingly genuine companies, some of which were FCA regulated, would understandably have made the scam very convincing. And Ms Y's interactions with the parties bear that out further, considering the quality and persuasiveness of interactions with S and the materials and channels used to promote the supposed investment. It also appears Ms Y's family member had relayed positive experiences to Ms Y, lending further legitimacy through a personal recommendation.

As no exceptions to reimbursement can be fairly applied, it can be concluded that Santander ought to have refunded Ms Y when she raised her scam claim. It's then fair and reasonable that it now compensates her to that effect.

Are there other remedies available to Ms Y?

It is true that the FSCS will consider some claims against the intermediary. But not all companies that used the intermediary are to be covered; some are excluded. There's nothing the FSCS has published to say claims linked to S will be included.

The Insolvency Service has also publicly stated that the activity S was engaged in was not FSCS protected, setting that out as one of the frequent deceptions S carried out, in that it lied to investors about being covered.

Even if Ms Y were able to pursue a claim with FSCS, it and the Financial Ombudsman Service are separate organisations, and the rules governing whether a customer is eligible to receive compensation from FSCS are separate to those which apply to the Financial Ombudsman Service. FSCS will consider the claims submitted to it under the rules set for the FSCS by the Financial Conduct Authority.

Consumers might be permitted to pursue a claim to the Financial Ombudsman Service and the FSCS (should FSCS accept the consumer's claim) involving S, and at the same time. However, should a consumer receive compensation from the FSCS relating to their claim against S, the consumer may be required to pay any further compensation to FSCS that they receive from their bank (including as a result of any Financial Ombudsman Service award) relating to the consumer's complaint against S. Any questions relating to the terms on which compensation is paid by the FSCS should be directed to it.

Putting things right

On Ms Y's acceptance, Santander should:

- Refund Ms Y's loss to the scam (my understanding being that there was £275.63 returned to Ms Y over the course of the scam, meaning a £9,724.37 reimbursement); and
- Pay interest on that sum at 8% simple per year, calculated from the date the claim was declined under the Code 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 Ms Y to accept or reject my decision before 7 March 2025.

Ben Murray
Ombudsman