DRN-5025416

The complaint

Mr R complains Santander UK Plc hasn't refunded him after he reported falling victim to a scam.

What happened

The background to this complaint is well-known to all parties, and so my summary here will be relatively brief.

Mr R learned of an investment opportunity with a business I call B. He's said he'd seen adverts as far back as 2013/2014 and made enquiries about investing in 2017. Interested in the opportunity, he made further enquiries and was told that B (along with its partners, including an FCA regulated business called Raedex Consortium Ltd) made arrangements for investors to put funds toward a vehicle which would then be leased to a UK driver. The lease fees and resale value would be used to generate returns on the investment. And individual investors would receive security over the vehicles for protection.

Mr R decided to proceed with an investment. All went as expected with returns being paid on time. That agreement concluded in 2020. Mr R decided to then reinvest, as all had gone well. He entered into a fresh agreement with B, investing a further £14,000 which was sent to B in February 2021.

But Mr R never received any returns on this investment. It became evident that there were many investors that received no payment from B after January 2021. And so Mr R discovered he'd been the victim of a scam and reported what had happened to Santander.

Santander considered his claim but said it wouldn't refund his loss. It said that it believed a genuine investment had failed, rather than it being a case of Mr R having been scammed. On that basis it said it wasn't responsible for covering his loss.

Unhappy with Santander's response, Mr R brought his complaint to our service.

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.

The starting position at law is that Mr R is responsible for any transactions made from his account which were properly authorised (as they were here). This is set out in the Payment Service Regulations (2017) and confirmed in his account terms and conditions with Santander.

Santander is, however, a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. The Code is in place to see the victims of scams reimbursed in most circumstances. But it doesn't apply to all payments made by a customer.

It must be the case that payments have been made toward an authorised push-payment (APP) scam, as defined in the Code. The Code doesn't apply to civil disputes where a customer may have a dispute with a merchant or business about the quality or non-receipt of goods and services, or indeed a failed but otherwise legitimate investment.

Can Santander delay making a decision under the CRM code?

Santander has argued that this and other complaints involving B and its partners are the subject of an ongoing complex investigation and it would be fair to wait for the outcome of this investigation before making a decision on whether to reimburse Mr R. But I disagree.

The CRM code says firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

But this provision only applies before the firm has made its decision under the code – it can't seek to delay a decision where it's already given an outcome. And Santander only raised this after the case was referred to our service and it had already reached a decision on Mr R's claim in its final response letter, when it said it believed this was a civil dispute arising from a failed legitimate investment, rather than it being a case of Mr R having been scammed. So, Santander can't now rely on this provision here.

And, in any event, the Serious Fraud Office (SFO) had been carrying out an investigation into the car leasing company and several connected companies. But that investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of former company directors with fraud, on its website.

The Lending Standards Board has also said that the code does not require a criminal test to have been met before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So as the SFO has reached an outcome on its investigation, and I don't think it's fair or necessary to wait until the outcome of the related court case – which isn't scheduled for well over a year – I don't think it's fair for Santander to delay making a decision on whether to reimburse Mr R any further.

Has Mr R been the victim of a scam, as defined in the CRM code?

The CRM Code defines a scam as a situation where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

I must then consider whether the purpose Mr R intended for the payments was legitimate, whether the purposes he and B intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of B.

I'm satisfied Mr R made the payments with the intention making an investment into the car leasing activities described by B. He believed his money would be used to purchase a specific vehicle which would then be leased out, and that he would receive returns on the investment. And he was meant to receive security over the vehicles invested in. I've seen no evidence to suggest Mr R thought anything different or had doubts as to B's legitimacy.

I'm also satisfied the evidence shows B didn't intend to act in line with the purpose for the payments it had agreed with Mr R.

The correspondence he received from B confirmed his money would fund a specific vehicle, and prominently highlighted that the vehicle he funded would be secured in his favour by way of a fixed charge registered at Companies House. But the Financial Conduct Authority's (FCA) supervisory notice to one of the connected companies said that, while the companies had around 1,200 customers and had entered around 1,200 leases, they had only registered 69 vehicles at Companies House – which suggests the vast majority of the vehicles funded weren't secured in the way customers were told they would be.

The FCA also checked a sample of the vehicles the companies held against the DVLA database and found a significantly larger proportion of these were second-hand than the companies' stated business model suggests or would support – as it relied on securing significant discounts on new vehicles, which wouldn't be available on second-hand vehicles.

It also found a number of leases started significantly before the vehicles were put on the road, and some vehicles were not found on the database at all. And the FCA said it considered the companies' valuation of the vehicles it held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of one of the connected companies also said that the total number of loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 – or less than one car for every six loan agreements.

I've seen no evidence of a record at Companies House to show any charge in Mr R's favour over any vehicle with the company following his investment. The evidence shows that B was not carrying out key parts of the proposed investment and I find it's safe – and fair and reasonable – to conclude that is the case with Mr R specifically.

It then follows that I'm persuaded B wasn't acting in line with the business model and features of the investment it had led Mr R to believe he was making. And so the purpose B intended for the payments wasn't aligned with the purpose Mr R intended.

The SFO has also said that the former company directors are accused of providing those who invested with false information and encouraging people to pay in whilst knowing that investments were not in reality backed up by the vehicles they had been promised. This discrepancy in the alignment of the payment purposes between Mr R and B was the result of dishonest deception on the part of the company.

I'm satisfied overall that the circumstances here meet the definition of a scam in respect of the CRM code.

Santander has questioned when we think B likely began to operate fraudulently. We have considered the cases before us to decide whether or not we think the customer has fallen victim to a scam and the reasons given for upholding this and other cases can be found in our views and decisions. It hasn't been necessary in the cases before us to draw a 'line in the sand' so to speak, suffice to say we are satisfied that customers that have brought complaints to us have more likely than not been scammed. We are aware, however, the SFO are satisfied that it was fraudulent from the start.

I note Santander references the administrator's report and the complexity surrounding this particular investment and the group of businesses. However, having read the report, there are several matters being referred to court – the most notable for these purposes, is whether the charges granted over some vehicles for investors are valid. To date we have not issued any views or decisions upholding complaints where we are aware a charge over a vehicle exists. So this issue isn't relevant to this case.

Should Mr R have received reimbursement under the CRM Code?

There are exceptions to reimbursement set out in the Code which a firm can choose to rely on in denying the victim of a scam a refund. The exceptions most relevant to this complaint can be summarised as:

- The customer ignored an effective warning given at the time a payment was being made;

- The customer made the payments without having a reasonable basis for believing the purpose of the payment was legitimate.

Santander hasn't said it would seek to rely on the effective warnings section and provided no evidence of such warnings being given. And so the exception to reimbursement doesn't apply.

It's also the case that B was operating a very advanced and sophisticated fraud. So I'm not convinced that even if an effective warning had been delivered it would have made a difference. That wouldn't have meant Mr R ignored an effective warning, instead that he reasonably moved past it in the face of a very convincing scam.

Moving on to Mr R's basis of belief, and as I've touched on already, it's evident B and its partners were running a sophisticated and convincing scam. That's revealed by the involvement and findings of the SFO, the joint administrators, the FSCS, and even Santander's own comments about complaints involving B.

It's also the case that Mr R had had previously dealings with B when he invested in February 2021. An agreement had already run its course, and all had been delivered as promised. That would very understandably have given Mr R confidence to invest again.

I'm satisfied Mr R had no reason to suspect the investment was anything other than legitimate. And so the second potential exception to reimbursement can't fairly and reasonably be relied upon by Santander.

As I'm satisfied Mr R has been the victim of a scam, and no exceptions to reimbursement apply, the fair and reasonable finding is that he ought to have been reimbursed under the CRM Code. And it's then fair and reasonable to find Santander ought to compensate him to that effect now.

Putting things right

On Mr R's acceptance, Santander should:

- Reimburse Mr R's total loss to the scam in respect of the payment made in February 2021, that being £14,000 and where no returns were paid to him.

- Pay interest on that sum at 8% simple per year, calculated from 15 days after the directors subject to SFO investigation were charged (19 January 2024) to the date of settlement. That takes account of the time Santander has to pay a refund under the Code once the outcome of a scam investigation is known.

In making this award I have considered the following, which are issues raised by Santander over the course of this complaint.

Redress value

I'm satisfied the redress value I've stated here is fair and reasonable. It takes account of all losses covered by the CRM Code. I've not considered the payments and returns prior to the February 2021 investment as they haven't been complained about. And it's clear that any earlier debits and credits don't relate to the February 2021 payment.

The involvement of the FSCS

The Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. More information about FSCS's position on claims submitted to FSCS against Raedex can be found here: https://www.fscs.org.uk/making-a-claim/failed-firms/raedex/

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Mr R is now complaining to us about in connection with the activities of Santander.

As I have determined that this complaint should be upheld Mr R should know that as he will be recovering compensation from Santander, he cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount they recover from Santander they may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mr R has already made a claim at FSCS in connection with Raedex, and in the event the FSCS pays compensation, Mr R is required to repay any further compensation he receives from his complaint against Santander, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS shares information with other public bodies can be found in our privacy notice here: ~~(~~https://www.financial-ombudsman.org.uk/privacy-policy/consumer-privacy-notice~~)~~"

The joint receivers

In order to avoid the risk of double recovery Santander is entitled to take, if it wishes, an assignment of the rights from Mr R to all future distributions under the administrative process before paying the award.

My final decision

I uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 21 March 2025.

Ben Murray
Ombudsman