

The complaint

Mr R complains about Santander UK Plc. He says that it failed to protect him from a scam and would like it to refund him the money he has lost.

Mr R's complaint has been referred to this service by a professional representative, but for the sake of readability, I will mainly just refer to Mr R.

What happened

In 2018, Mr R was looking to make an investment and was introduced to a company – that I will refer to as 'B' - by an advisor.

Mr R says that he thought he was investing into property development and would receive a fixed return. Between 2018 and 2020, Mr R sent B £100,000.

B went into administration and Mr R says that he didn't receive the promised returns and felt that he had been taken in by an elaborate scam. Unhappy, he complained to Santander as he felt it should have protected him from the scam when he made the payment from his account with it. Santander considered Mr R's complaint, but said it did not agree this was a scam and instead felt it was a failed investment, so treated the case as a civil dispute.

Unhappy with this outcome, Mr R brought his complaint to this Service.

Our Investigator looked into things and reviewed it under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. They agreed it was more likely a civil dispute between Mr R and B. On balance, they did not think the evidence showed B didn't intend to act in line with the agreement or pay the funds described in the contract. And instead, they felt it was more likely this was an investment that failed.

Mr R's representatives responded to the view saying they and Mr R disagreed with the Investigator. As an informal agreement could not be reached, the complaint has been passed to me for a final decision.

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.

Mr R's representatives have written at some length about the issues surrounding this case. I may not comment on everything they have told us, nor every individual point raised. I want to reassure both parties though, that this doesn't mean I consider things unimportant, nor that I haven't reviewed everything. While I've carefully thought about all of the information on the case, I'm going to focus on what I consider the crux of this complaint and the key facts. This reflects the informal nature of our service.

It isn't in dispute that Mr R authorised the payment he made to B. Because of this, the starting position – in line with the Payment Services Regulations (PSR's) 2017 – is that he is liable for the transaction.

In broad terms, the starting position at law is that a bank 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. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer, even when they have authorised a payment.

In this instance, there are two main issues for me to consider. Firstly, should Santander have intervened and asked questions about the payments and would that have uncovered that Mr R was being scammed. Secondly, should Mr R receive a refund under the CRM.

I have only been provided bank statements from October 2018. So I am unable to say whether the first payment would have looked unusual, as I cannot see Mr R's payment history before the first payment. So based on this I have considered what would have happened had it seemed unusual and had Santander intervened during this payment and asked a number of open questions about the first payment.

The type of questions I'd expect Santander to have asked would include: how Mr R found the investment, what return he had been offered and what checks he had done on B. Santander also may have asked what documentation Mr R had received in relation to the investment.

But, even if Santander had asked the type of questions I would've expected, I'm not satisfied that it would've prevented Mr R from making the payments or prevented his loss.

I say this because all of the information available about B at the time of the payments, suggested that this was a legitimate investment.

B was a UK incorporated company since 2011 and all of the documentation that Mr R received looked professional. The rate of return wasn't completely unrealistic, and I haven't seen any negative information that would've been available at the time that suggested this was a scam.

So, even if Santander had asked open probing questions, I not satisfied that they would've been concerned by the information Mr R would've given them. On that basis, I don't think they acted unreasonably in processing Mr R's payment instruction, and I'm not satisfied that they could've prevented his loss.

In relation to the remaining payments, looking at Mr R's bank statements from October 2018 he made a number of large payments throughout the time that the payments were made. So from what I can see, I don't think that the remaining payments would have looked unusual or should have prompted a further intervention from Santander.

In relation to whether Mr R should receive a refund under the CRM. 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. Further to this, the CRM Code came into effect on 28 May 2019 and isn't retrospective. As that's the case, only the payments made by Mr R after 28 May 2019 are covered by the CRM Code, the payments made before it fall outside the scope of the CRM.

But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code below:

"...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) The Customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent.”

I've therefore considered whether the payments Mr R made to B fall under the scope of an APP scam as set out above. Having done so, I don't think that they do. I'll explain why in more detail.

In order to determine if Mr R has been the victim of a scam, I have to consider if his intended purpose for the payments was legitimate, whether the intended purposes Mr R and B were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the B.

Based on the evidence available to me, it appears Mr R was intending for the funds to be invested in specific building projects around the country. He then expected to receive regular returns on his investment. The paperwork he received prior to investing appeared to be professional and detailed, and B was listed on Companies House as being incorporated since 2011. So, I see no reason why Mr R would not have thought this was a legitimate investment.

I've gone on to consider whether B's intended purpose for the payments aligned with what Mr R intended. I've seen evidence that three building projects were completed by B. They also had other projects ongoing, however these had to be sold to other developers after B entered into financial difficulty. On balance, I think this shows B was a legitimate company involved in legitimate building projects and I think it's unlikely a scam company would have completed three large scale building projects, at significant cost, in order to entice more funds from investors.

I note that B paid unregulated introducers a high level of commission which in turn made the level of return offered to investors unlikely. However, whether or not unregulated investors were used to introduce the investment does not indicate that B set out to defraud investors of their funds, with no intention to invest the funds into building projects. And while I have not seen evidence of the levels of commission paid to introducers, I don't think there is a correlation between the level of commission and Mr R being the victim of a scam in the circumstances.

It should be noted that the liquidator for B has not provided any evidence to suggest they were acting fraudulently or operating a Ponzi scheme. They are still in the process of investigating a significant number of transactions made from B to various subsidiary companies, due to the way in which the B network was set up. However, at the moment there is no indication that these transactions were made with the intention of hiding these funds and not using them towards development projects.

I also note that B had not filed accounts since 2018. While it appears B has not managed its finances correctly, I don't think this therefore means they were conducting a scam or that they intended to scam investors at that time. During this period in question, B were completing development projects around the country, and I think this highlights that they intended to use customer's investments in these development projects.

I note Mr R's representatives recent comments which include references to the PAS, CRM, Menzies report and a judgement involving an administration order. I have carefully considered all of the points raised. But I do not think this is sufficient to demonstrate that B intended to scam investor or that the funds were misapplied.

On balance, I think B's intended purpose for the funds aligned with Mr R's and nothing I have seen indicates to me that B intended to defraud him. Instead, I think it's more likely this was a failed investment. So I don't think it meets the definition of an APP scam. And I think Santander acted reasonably when it treated the case as a civil dispute.

I'm really sorry to disappoint Mr R, as I know he's 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

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 May 2025.

Charlie Newton
Ombudsman