DRN-5059209

The complaint

Mr S complains that Santander UK Plc ("Santander") won't refund the money he lost when he was the victim of a scam.

What happened

In November 2017, Mr S saw an advert online about an opportunity to invest in a company (Buy2let/Raedex Consortium Ltd – referred to as R in this decision) which leased cars. His investment matured in December 2020, and at this time he was offered a similar deal. He was told his investment would be used to purchase a new vehicle which would then be leased out. The driver would make monthly lease payments, with part of these repayments being passed on to Mr S by R over the term of the investment. Mr S was told at the end of the investment term, the driver would return the vehicle and Mr S would receive his final exit payment from R which would consist of the remainder of capital and interest detailed in the agreement. Mr S was also told that the investment was secured against a vehicle.

Mr S transferred £14,000 (by two transfers of £1 and £13,999) in December 2020 and says he received one monthly return totalling £267.36 in January 2021. He made a further transfer of £84,000 (by four payments of £21,000) in January 2021. Shortly after this R went into liquidation.

Mr S believed he'd been the victim of a scam and contacted Santander to ask it to return his funds. Santander declined to refund Mr S on the basis that it considered this was a failed investment, rather than a scam.

One of our investigators looked at the complaint. He said the evidence showed there was a clear discrepancy in alignment between the payment purposes Mr S and R had in mind, so this met the definition of a scam. He also said he was satisfied Mr S had no reason to suspect the investment wasn't legitimate. So, he recommended Santander refund Mr S's losses in full. He recommended interest be added from 15 days after the date the directors of R were charged by the Serious Fraud Office (SFO) to the date of settlement.

Santander did not respond to the points mentioned in the view but asked for the case not to be put to an ombudsman for a decision.

As the complaint could not be resolved informally, it's been passed to me for a 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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

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 and reasonable for the bank to reimburse the customer 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 (LSB) Contingent Reimbursement Model (CRM Code) for authorised push payment scams. The CRM Code was a voluntary code for reimbursement of authorised push payment scams which required firms to reimburse customers who have been the victims of APP scams - in all but a limited number of circumstances. Santander was a signatory to the CRM Code at the time the payments in question in this case were made.

Where a firm is a voluntary signatory of the LSB's CRM Code, I need to see whether it is a relevant consideration for my decision. And, where it is a relevant consideration, I must carefully consider the provisions of the LSB's code itself that the firm has agreed to and any guidance the LSB has provided on its application.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payment(s) in question, on the balance of probabilities, meet the CRM Code's definition of a scam:

An "APP scam" is defined in the Definitions and Scope section of the CRM Code:

> *"Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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."*

If I, fairly and reasonably, make a balance of probabilities conclusion that it does, then the provisions of the CRM Code apply. In that event, unless Santander is able to show that the consumer is not entitled to reimbursement due to any the CRM's Code exceptions at R2(1) and the vulnerability considerations are not relevant, then the consumer is likely to be entitled to reimbursement.

Can Santander delay making a decision under the CRM Code?

Initially, Santander said it is still reviewing its position and asked for the case not to be put to an ombudsman. It has also not provided its file. However, it has since explained it doesn't agree with the service's approach and asked for a decision.

But for clarity, the CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision. By asking for the case to be placed on hold, I take that Santander considers that R3(1)(c) applies in this case.

In deciding whether R3(1)(c) is applicable in this case, there are a number of key factors I need to carefully consider:

- Where a firm already issued a reimbursement decision - for example by telling the consumer they will not be reimbursed because they are not the victim of an APP scam – then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that *"a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code".*
- The Financial Ombudsman Service does not have the power to restart R3(1)(c) – so where a firm has made a reimbursement decision a consumer is entitled, under the DISP Rule, for our service to decide the merits of the complaint about the payment(s) they made fairly and reasonably on the balance of probabilities.

So, this provision only applies *before* the firm has made its decision under the CRM Code. So, Santander can't seek to delay a decision it's already made. And Santander only raised this point (or asked for the case to placed on hold) after the case was referred to our service.

It had already reached a decision on Mr S's claim in its final response letter to him, when it said the complaint appeared to be the subject of a civil dispute between Mr S and the seller of the goods/services.

So, I don't think Santander can now rely on this provision. Although it seems from its most recent communication that it would now welcome an ombudsman decision – as it doesn't agree with the approach taken.

Is it appropriate to determine Mr S's complaint now?

I ultimately have to decide whether it is fair and reasonable for Santander not to have upheld Mr S's claim for reimbursement of his losses.

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 R's former company directors with fraud, on its website.

There may be circumstances and cases where it is appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence already available. And I am conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I am required to apply (which - as explained above - is the balance of probabilities).

The Lending Standards Board has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place 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 in order to determine Mr S's complaint I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that Mr S was the victim of a scam rather than a failed investment.

I've reminded myself that Parliament has given ombudsmen the job of determining complaints quickly and with minimum formality. In view of this, I think that it would not be appropriate to wait to decide Mr S's complaint unless there is a reasonable basis to suggest that the outcome of the related court case may have a material impact on my decision over and above the evidence that is already available.

Santander has not clearly articulated whether it considers this may be the case. It's not clear if Santander is concerned that any subsequent court action regarding R's actions may lead to Mr S being compensated twice for the same loss, i.e. by Santander and by the courts. But I don't know how likely it is that any funds will be recovered as part of those proceedings.

Similarly, I am aware that there is an ongoing administration process – including liquidation. This might result in some recoveries; but given this would initially be for secured creditors, I think it's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive. That said, in order to avoid the risk of double recovery Santander is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award. I accept that may carry a certain amount of administrative burden, but Santander hasn't made any arguments as to why it can't take an assignment of rights.

I am also aware that 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 S is now complaining to us about in connection with the activities of Santander.

As I have determined that this complaint should be upheld, Mr S 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 he recovers from Santander he 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 S has already made a claim at FSCS in connection with this matter and in the event the FSCS pays compensation, Mr S 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}"

Whilst the FSCS may be taking on these cases against R as a failed unregulated investment – it does not automatically follow that this was *not a scam*. This is not something that the FSCS would make a finding on before considering those claims.

As Santander can ask Mr S to undertake to transfer to it any rights he may have to recovery elsewhere, I'm not persuaded that these are reasonable barriers to it reimbursing him in line with the CRM Code's provisions.

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 more than two years). Nor do I consider it's necessary to wait for the administration process to complete or wait for a claim with FSCS to be made. All in all, I don't think it's fair for Santander to delay making a decision on whether to reimburse Mr S any further.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the court case for me to reach a fair and reasonable decision. And I don't think it would be fair to wait for other investigations to complete before making a decision on whether to reimburse Mr S.

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

Santander has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

The CRM Code also says it 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 it wouldn't apply to a genuine investment that subsequently failed.

And the CRM Code only applies if the definition of an APP scam, as set out in it (and as I have set out at the start of this decision), is met.

I've considered the first part of the definition, and having done so I'm satisfied that Mr S paid the account he was intending to send the funds to. And I do not think there was any deception involved when it comes to who he thought he was paying. So, I do not think the first part of the definition set out above affects Mr S's transactions.

I've gone on to consider if Mr S's intended purpose for the payment was legitimate, whether the intended purposes he and the company (R) he paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of R.

From what I've seen and what Mr S has told us, I'm satisfied Mr S made the payment with the intention of investing with the car leasing company. He thought his funds would be used to purchase a vehicle which would then be leased out, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr S didn't think this was legitimate.

I've considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so whether this was a scam or genuine investment.

But I think the evidence I've seen suggests the car leasing company didn't intend to act in line with the purpose for the payments it had agreed with Mr S.

Mr S was told his capital would be used to fund a specific vehicle and the documentation listed one of the key benefits as 'UK asset-back Security'. But there's no evidence this was the case or that the consumer's funds were secured against a specific vehicle.

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.

There's no record at Companies House of any charge in Mr S's favour over any vehicle with the company following his investment. And, as I think the evidence shows the company was largely not carrying out this key aspect of the investments, I think it's safe to conclude that this wasn't done in Mr S's case either.

So I think the evidence shows the car leasing company wasn't acting in line with the business model and features of the investment it had led Mr S to believe he was making. And so the purpose the company intended for the payments Mr S made wasn't aligned with the purpose Mr S intended for the payments.

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 cars they had been promised. So I think the discrepancy in the alignment of the payment purposes between Mr S and the company was the result of dishonest deception on the part of the company.

And so I think the circumstances here meet the definition of a scam as set out under the CRM Code.

Is Mr S entitled to a refund under the CRM code?

Under the CRM Code the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mr S. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning.

A second circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the payments without having a reasonable basis for believing that:

- the payee was the person the customer was expecting to pay;
- the payment was for genuine goods or services; and/or
- the person or business with whom they transacted was legitimate

There are further exceptions within the CRM Code, but they do not apply in this case.

Although Santander has not established that any of those exceptions apply, for completeness I find that none apply in this case. I have explained why below:

The way Mr S was told the investment would work doesn't appear to be suspicious and the returns he was told he would receive don't appear to be too good to be true. And, in line with a genuine investment opportunity, the brochure stated that capital is at risk. The investment material and communications with R I've reviewed appears professional and there was nothing in the public domain at the time about R that Mr S could've reasonably inferred from that a scam was taking place. And it appears the company had been operating for several years. One of the connected companies was authorised and regulated by the FCA, and a number of previous investors (including Mr S) had received the returns they were told they would. So I don't think there was anything about the investment that should have caused Mr S concern. And I find Santander hasn't established that Mr S made the payment without a reasonable basis for belief that the investment was legitimate.

Santander hasn't submitted it provided a warning at the time Mr S made the transaction – so I can't fairly say Mr S ignored an effective warning.

And so, I don't think Santander has established that any of the exceptions to reimbursement under the CRM Code apply here, and so it should refund the money Mr S lost in full.

Putting things right

As Mr S received one monthly interest payment back from R, I think it would be fair for this payment to be deducted from the amount Santander has to refund him.

I also don't think any action I would've expected Santander to take would have prevented Mr S making these payments, as I don't think any of the information, I would've reasonably expected it to have uncovered at the time of the payments would've uncovered the scam or caused it significant concern. And I don't think it was unreasonable for Santander to initially decline Mr S's claim under the CRM Code, as it wasn't clear from the evidence available at the time that this was a scam.

But the CRM Code allows firms 15 days to make a decision after the outcome of an investigation is known. So I think Santander should have responded to Mr S's claim and refunded his losses under the CRM Code within 15 days of the SFO publishing the outcome of its investigation. And so I think Santander should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date of settlement.

So in order to put things right for Mr S, Santander UK Plc must:

- Refund Mr S the payments he made (£98,000) as a result of this scam, less the payment(s) he received back from the company (£267.36). So £97,732.64

- Pay Mr S 8% interest on that refund, from 15 days after 19 January 2024 until the date of settlement.

As the car leasing company is now under the control of administrators, it's possible Mr S may recover some further funds in the future. In order to avoid the risk of double recovery Santander UK Plc is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

If Santander UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mr S how much it's taken off. It should also provide a tax deduction certificate if Mr S asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and I require Santander UK Plc to put things right for Mr S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 March 2025.

Kathryn Milne
Ombudsman