

## **The complaint**

Mr G complains Santander UK Plc won't refund the money he says he lost to a scam.

## **What happened**

Mr G sent a payment of just under £30,000 to a company, "H", in September 2020. H was a property/rental development company (and the parent company of a group of companies), which offered loan notes to investors to raise money for its projects.

Please note that while Mr G paid the funds, it appears the investment with H was held by a (now dormant) limited company which he was the director of. But as it was Mr G's funds from his Santander account that paid H, he is the eligible complainant for the purposes of this case.

H subsequently went into administration. Mr G believes it was operating a scam. He complained to Santander (via a professional representative) that it should refund him under the terms of the Contingent Reimbursement Model code (the CRM code) and due to a breach of its duty of care.

Santander didn't agree to refund Mr G. It said the matter was a civil dispute rather than a scam. Unhappy with this response, Mr G referred the matter to our service. Our investigator didn't uphold the complaint; she wasn't persuaded H had been operating a scam.

Mr G has appealed the investigator's outcome. His representative submitted a lengthy response explaining why it believes H was a scam. I've summarised what I've considered to be the main arguments raised below:

- Ponzi schemes often engage in genuine activity early on to gain the appearance of legitimacy;
- H's tactics share features with other known scams;
- H paid a high rate of commission to introducers, which wasn't disclosed to investors. This was a misuse of funds;
- Not all the funds raised were spent on property acquisition, and the remainder weren't used for their intended purpose;
- H and its linked companies have manipulated their finances/assets, and have failed to cooperate with insolvency practitioners, in order to disguise fraudulent activity.

## **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've decided not to uphold it. I'll explain why.

To start, I want to reassure both sides that I've considered all their submissions in full when reaching my decision. The background and arguments set out above are simply a summary of what has been provided. Given the extensive submissions, I won't be responding to each allegation or point made; instead, I'll be focussing on the main points relevant to my determination.

It's agreed Mr G authorised the payment in question. Under the Payment Services Regulations 2017, the starting position is that he is liable for the transaction.

However, there are additional considerations where the payment was made as a result of an APP scam – as Mr C says was the case here. Taking into account the law, regulations, guidance, standards, codes, and industry practice, I consider there to be some circumstances where it may be fair and reasonable for an account provider to reimburse their consumer if they authorise a payment due to the actions of a fraudster.

Of particular relevance to the question of what is fair and reasonable in this case is the CRM code, which Santander is a signatory of. This provides additional protection to victims of APP scams, as defined in the code (in section DS1(2)(a)):

*(a) APP Scam 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.*

Section DS2(2)(b) of the CRM code contains a specific exclusion for:

*private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier;*

So, what I've considered is whether Santander acted fairly in deeming this matter a civil dispute rather than a scam. Looking at the definition of an APP scam, I first need to consider what Mr G believed the purpose of the payment to be – and whether that was legitimate. I'm satisfied he believed he was paying to invest with a legitimate property development company.

I therefore need to consider H's intended purpose for the payment it received broadly matched Mr G's purpose – to determine whether there was a dishonest deception by H in order to deprive Mr G of these funds.

I've looked at the arguments/submissions put forward by Mr G's representative about why it thinks H was operating a scam. I consider a lot of these to be based on assumptions. While there is evidence of poor business practice and financial mismanagement, I don't think there is enough to demonstrate H induced Mr G to make this payment through fraudulent deception. A lot of adverse inferences have been drawn from incomplete information.

H completed three separate developments. It was also working on other projects which it sold on to other developers when it ran into financial difficulty. These actions are indicative of a company operating legitimately.

While Mr G's representative argues this work was used to give the appearance of legitimacy and lure in other investors, I'm not persuaded this is the more likely explanation. It would involve a lot of work and cost to complete three large scale building projects as a premise for going on to operate a scam. I consider this an indication H was more likely planning on using Mr G's funds for other building projects, as intended.

I can also see from the submissions that H spent a substantial amount on property acquisition. The representative suggests the remaining funds were fraudulently misappropriated. But I'm not persuaded there is reliable evidence to show that's the more likely explanation. I don't think it would be reasonable for me to assume all the other funds weren't used as intended/expected by those, such as Mr G, who invested.

H paid high commission to unregulated introducers, which the representative argues is indicative of fraud. But I don't think the lack of regulation by the introducers, nor the use of commission, is enough to show H wasn't intending to use the money it received to fund building projects.

Additionally, the representative argues H was trading while insolvent since at least early 2019. I'm aware it stopped filing accounts by this point, prior to it going into administration. But projects were being worked on/completed during this period. So I don't think this is enough to support a conclusion that, as Mr G made this payment in 2020, H wasn't intending to use it for a legitimate project.

While I appreciate H may have failed to cooperate with administrators, again, I don't think there is persuasive evidence to show this was done to hide fraudulent activity.

I appreciate some investigations are ongoing. But at this point in time, I haven't seen any persuasive evidence from H's liquidator, or any other external bodies, to show H was taking payments for developments which it had no intention of completing. If new material evidence comes to light at a later date to show H was operating a scam, then Mr G would be able to ask Santander to reconsider this matter (and may ultimately be able to refer the issue back to us if he is unhappy with its response).

Having carefully considered all the available evidence and arguments, I'm not persuaded it's more likely H took Mr G's payments for a purpose which substantially differed from what he expected. I therefore think it was fair and reasonable for Santander to decline to refund him – in line with the terms of the CRM code and its wider obligations.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 May 2025.

Rachel Loughlin  
**Ombudsman**