DRN-5081813

The complaint

Mr H complains that 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 I'll only summarise key events here.

Mr H was introduced to an investment opportunity involving a property development company in 2020. I'll refer to that company as Company A.

Mr H decided to invest and sent £10,000 from his account with Santander to Company A's account in February 2020. He believed the money would be used to fund Company A's property development projects, with returns on the investment to be paid further down the line.

But Company A went into administration in 2022 and without Mr H having received what was promised. As details about Company A's collapse came to the fore, Mr H became of the view he'd been the victim of a scam, and that Company A had never been offering a legitimate investment opportunity.

Mr H raised his concerns with Santander and asked that it reimburse his loss. It investigated but declined to do so. It said it believed Mr H had paid a legitimate company for a legitimate purpose and that Company A was a failed business, rather than it being the case that Company A had set out to scam him.

Mr H was unhappy with Santander's response and so brought a complaint to our service. One of our investigator's considered it but didn't recommend it be upheld. They found Santander had acted fairly and reasonably in concluding Mr H had a civil dispute with Company A and that Santander ought not bear responsibility for his loss.

Mr H was unhappy with our investigator's recommendations, still believing he'd been the victim of a scam. And so asked that an ombudsman review the complaint.

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 H has provided this service with some detailed submissions and has referred to numerous sources of evidence in presenting his complaint to us. In reviewing this complaint, I have considered all of this evidence, and the arguments made. I am not, however, responding in an equal level of detail as Mr H. This is not to be discourteous, or to say that what has been sent is irrelevant to his complaint. Instead, my intention is to focus on what I consider to be the points most relevant to the outcome of the complaint.

And so, evidence or information not mentioned or discussed by me specifically in this decision hasn't been ignored. I'm satisfied it's not necessary for me to comment on each individual point or argument made to reach a fair and reasonable outcome.

The rules under which this service operates allow for me to do this, and is reflective of our requirement to resolve complaints as quickly and informally as possible, and as an alternative to the courts.

Having considered all of the available information and evidence, I'm reaching the same outcome as our investigator and for broadly the same reasons.

The starting point at law is that a customer is responsible for any payments made from their account which are properly authorised. And when an authorised payment instruction is received, it's incumbent on the account provider to process it as quickly as possible and with minimal friction. This position is set out in the Payment Service Regulations (2017).

There are, however, taking account of relevant rules, codes, and best practice standards, times when a firm shouldn't take a customer's payment instruction at face-value and ought to establish the wider circumstances behind it.

It's also the case that Santander, at the time of the payment, was 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 from a customer's account.

Importantly, the payment made must meet the Code's criteria and definition of an APP scam. The payments must have been made to another person for what the customer believed were legitimate purposes, but which were in fact fraudulent.

And the Code confirms that it doesn't apply to payments which are the subject of a private civil dispute, such as where goods and services haven't been provided. The collapse of a legitimate property investment firm, leading to the loss of invested funds for its customers, would be included as the non-delivery of goods and services, meaning payments made to such a company wouldn't be covered by the Code.

I then need to consider whether Company A was a legitimate but failed investment company, or whether there is sufficient evidence to show it was more likely than not operating a scam, and always intended to steal Mr H's money, when he invested. Having done so, I'm not persuaded there is sufficient evidence to show Company A was operating a scam.

It's clear Mr H sent his money to Company A with the intended purpose of it being used in the development of property, with the view to returns on investment being generated. And Mr H was clearly persuaded Company A was a legitimate venture at the time.

It's entirely evident that Company A hasn't delivered what was promised and Mr H has undoubtedly lost out financially as a result. But what I've not seen sufficient evidence of is that the loss was the result of Company A's intention to steal the money from the outset.

H was a limited company that had been operating since 2011, and it had been filing accounts broadly as expected up until 2019. It had taken on and completed three separate developments of the type it claimed to be involved with. There were also other projects in development, but which were sold off to other developers as the company fell into financial difficulties. I'm persuaded this evidences an intent to legitimately provide the services sold to investors as they are the actions of a legitimate property development enterprise.

It's been suggested that these activities may have been a screen to draw in victims, hiding the scam behind a veil of legitimacy. But I've not seen sufficient evidence to persuade me that is more likely than not the case.

I've mentioned the filing of accounts by Company A and that this continued until 2019. From there it failed to provide Companies House with the information it ought to have. Company A went on to collapse in 2022. But whilst this is clearly financial mismanagement, it doesn't show that Company A's intention was to scam investors or that it didn't intend to finance development projects. The financing of the projects appears to have continued during the period in which Company A wasn't filing accounts.

It is the case that investigations outside of this service remain ongoing, including those being carried out by the liquidator. But I've no evidence from any such parties to show Company A was operating a scam. It might be that changes in time and new material evidence may become available. Should that be the case, Mr H would be able to ask Santander to reconsider the matter and may be able to refer a complaint back to this service should he be unhappy with its response.

The liquidators of Company A have publicly stated they won't share evidence and information, at least whilst their work is ongoing. We've received nothing a substance from law enforcement either. And so we don't currently have reliable evidence to show Company A intended to scam investors from the outset.

Mr H has commented on a significant number of areas connected to Company A and how it operated. But much of this is circumstantial or inconclusive. There isn't enough to reach the evidential threshold that Company A was, on balance, acting with criminal intent.

For example, it's been stated that Company A raised in the region of £123m with only £38m used to buy land to develop. The question posited is then where the rest of the money has gone. But the absence of knowing where that money meant, doesn't mean it was obtained fraudulently. It is equally possible, in the absence of persuasive evidence, that it was used for costs associated with property development, such as materials, labour etc.

We do know Company A spent millions on purchasing land and the development of various projects, showing a substantial amount of apparently genuine activity carried out by Company A over the course of several years.

It might even be accepted that there was some misrepresentation from Company A within its investment brochures. But this is insufficient evidence to conclude Company A took such action with the intent of stealing investor funds.

As things stand, I'm not persuaded the payments made by Mr H are covered by the CRM Code. And so the answer given by Santander is fair and reasonable.

I've gone on to consider some of the further points raised alongside the issue as to whether Company A was operating a scam or not. These include whether Santander ought to have stepped in to question the payments and given warnings at the time they were being made.

The CRM Code states, broadly speaking, that firms should look to identify payments that present a scam risk and then deploy a proportional response to that risk. Typically, the response would involve delivering what the Code describes as an 'effective warning'.

The payments involved here might be argued as both high in value and out of character for Mr H. And in turn there could be an argument for saying Santander ought to have carried out a proportionate intervention and delivered an effective warning.

But, even if I were to find there had been a failure to intervene on Santander's part here, I still wouldn't be able to say that Mr H was due a refund under the Code. That's for the same reasons I've set out above; the protection of the Code and the eligibility for reimbursement don't apply. And so I couldn't make an award on the basis that part of the Code hadn't been met by Santander when there would be no entitlement to a refund anyway.

I've also thought about whether Mr H would be due a refund outside of the Code. There are industry standards, codes, and best practices which broadly mirror the requirements of the Code. And there are circumstances in which I might find a firm had failed to act and had, in turn, gone on to fail to prevent an avoidable loss. But for an award to be made I would still need to be satisfied the loss was the result of a scam. It wouldn't be fair and reasonable for a firm to reimburse a failed investment. It isn't for a firm to advise as to the wisdom of investment decisions. Any reimbursement would still be dependent on the loss being the result of a scam, and here I'm not persuaded it was.

I am sorry that Mr H has lost such a significant sum of money here. It’s clear he’s not received what was promised by Company A and it has let him down badly. But I’m not persuaded HSBC should fairly and reasonably now be responsible for that loss or seeing Mr H reimbursed.

My final decision

I don’t uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 27 August 2025.

Ben Murray
Ombudsman