

## **The complaint**

Mr C and Ms C complain that Santander UK Plc ('Santander') won't refund the money they say was lost as the result of a scam.

## **What happened**

In 2019, Mr C and Ms C heard about an investment from a family member. It involved a company I'll refer to as B, as well as a linked company I'll refer to as R. Mr C and Ms C initially made investments in 2019, which don't form part of this complaint.

The investment involved B buying cars, which it then leased to customers who may otherwise have had trouble securing a leased car. Mr C and Ms C were to receive a monthly return, as well as a lump sum on maturity, and the investment was for a three-year term.

In June 2019, Mr C and Ms C decided to invest further and sent £14,000 from their Santander account – which is the subject of this complaint.

Mr C and Ms C received the monthly returns as expected between June 2019 and January 2021, of £267.36 per month – a total of £5,347.20. During this period, Mr C and Ms C also continued to receive monthly returns of £534.72 on their earlier investment.

In February 2021, Mr C and Ms C received a letter which said that B was being investigated by the FCA and the company accounts were frozen. Then in March 2021, B went into administration.

Based on the information provided to investors, Mr C and Ms C believe they've been the victims of a scam. Through a professional representative, Mr C and Ms C raised a fraud claim with Santander in 2023. Santander declined to refund Mr C and Ms C, saying they have a civil dispute with B.

Mr C and Ms C weren't happy with Santander's response, so they brought a complaint to our service.

Initially an investigator didn't uphold the complaint, saying Mr C and Ms C hadn't suffered a financial loss. However, having reviewed the returns on Mr C and Ms C's account, the investigator identified that some of the returns Mr and Ms C received related to the previous investment and shouldn't be used in calculating the net loss on the investment of £14,000. This meant that Mr C and Ms C had suffered a financial loss in respect of the £14,000 investment.

The investigator was satisfied, based on the evidence, that Mr C and Ms C's funds weren't used for their intended purpose and were obtained by dishonest deception, so their claim was covered by the Contingent Reimbursement Model Code ('CRM Code'). Under the CRM Code, Mr C and Ms C were entitled to a refund of their outstanding loss as they had a reasonable basis for believing the investment was legitimate when they made the payment in June 2019.

Santander didn't agree with the investigator's opinion, saying:

- It's premature for our service to reach an outcome in the absence of a forensic review of B and its linked companies, and prior to the criminal trial of B's directors.
- We haven't correctly assessed Mr C and Ms C's net loss, based on the returns paid to their account.
- We haven't clarified the specific amount we're recommending they refund Mr C and Ms C.
- There is a risk that Mr C and Ms C will be over reimbursed, depending on the outcome of the administrator's review of B, and its linked companies.

### **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.

In broad terms, the starting position in law is that Santander are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

#### Are Mr C and Ms C entitled to a refund under the CRM Code?

Santander are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code does not apply to 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.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr C and Ms C made the payment, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mr C and Ms C thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payment and whether this was broadly in line with what Mr C and Ms C understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr C and Ms C were making the payment to B as part of an investment. Based on the evidence that Mr C and Ms C had available at the time, there isn't anything to suggest they didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose B had in mind and whether it was in line with what Mr C and Ms C thought.

In reaching an answer on what purpose B had in mind, I've considered the wider circumstances surrounding B, and the linked companies involved in the investment. The key information is:

- Following their investigation, the Serious Fraud Office (SFO) said the defendants had provided false information to investors, "encouraging people to pay in whilst knowing that investments are not in reality backed up by the cars they had been promised".
- One of the linked companies (R) told the Financial Conduct Authority (FCA) that it owned 1,200 cars, but the number of charges registered at Companies House was 69. The cars purchased were supposed to be new cars, but DVLA checks showed that 55 cars appeared to be second-hand. The business model relied to a large extent on securing deep discounts on new vehicles and such discounts would not be available on second-hand cars. There were other discrepancies found between what R told the FCA and what the DVLA checks showed.
- Administrators of one of the linked companies found that it entered into 3,600 investment agreements with individuals, which should've had specific secured vehicles. But the company only had title to approximately 600 vehicles.
- There is no evidence that cars were purchased with Mr C and Ms C's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that it's more likely than not Mr C and Ms C's funds weren't used for the intended purpose and that B obtained the funds through dishonest deception. So, I'm satisfied that Mr C and Ms C's payment meets the definition of an APP scam and is covered by the CRM Code.

The CRM Code says that Mr C and Ms C are entitled to a full refund unless Santander can establish that an exception to reimbursement applies.

Santander haven't provided any evidence or arguments that an exception to reimbursement applies, but for completeness I have considered this point.

#### Does an exception to reimbursement apply?

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that\*:

- The customer made 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 service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

*\* There are further exceptions outlined in the CRM Code, but they don't apply to this case.*

Santander haven't provided any evidence that suggests an effective warning was shown to Mr C and Ms C at the time they made the payment, so Santander can't rely on that exception to reimbursement.

I'm also satisfied that Mr C and Ms C had a reasonable basis for believing the investment was legitimate. I say this because a family member had previously invested with B and successfully received the promised monthly returns. Also, B were an active company on

Companies House, had positive reviews online and provided professional marketing material. I haven't seen any evidence that suggests there were warning signs that B wasn't offering a genuine investment when Mr C and Ms C made their payment in June 2019. So, Santander couldn't rely on basis for belief as an exception to reimbursement either.

As, I'm not satisfied that Santander can rely on an exception to reimbursement, Mr C and Ms C are entitled to a full refund of £14,000. Santander can deduct from that refund the returns that Mr C and Ms C received of £5,347.20. meaning a net refund should be paid of £8,652.80.

Santander are concerned that not all of the returns Mr C and Ms C received have been taken into account. However, the monthly return of £534.72 relates to the previous investment of £28,000 they made in April 2019 – which doesn't form part of this complaint. Mr C and Ms C didn't receive the lump sum on maturity of that earlier investment, so they suffered a further financial loss in relation to that investment. The returns of £267.36 per month, are the only monthly returns which are attached to the £14,000 investment which is the subject of this complaint.

#### The interest award

Prior to the SFO completing their investigation, Mr C and Ms C's payment wouldn't have been covered by the CRM Code.

However, on the conclusion of the SFO's investigation on 19 January 2024, Santander should've considered the available evidence and given Mr C and Ms C an answer under the CRM Code within 15 business days - as per R3 (1) (c) of the CRM Code.

This means interest should be calculated from 15 business days after 19 January 2024 (when the SFO investigation concluded) until the date of settlement. Interest is awarded at 8% simple per year.

It's possible that funds could be recovered at a later date through the administrators and Santander are entitled to ask Mr C and Ms C to sign an indemnity to cover this eventuality.

#### Claims made to 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 C and Ms C are now complaining to us about in connection with the activities of Santander.

As I have determined that this complaint should be upheld Mr C and Ms C should know that as they will be recovering compensation from Santander, they 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 C and Ms C have already made a claim at FSCS in connection with B, and in the event the FSCS pays compensation, Mr C and Ms C are required to repay

any further compensation they receive from their 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>"

### Santander's concern that we've reached an answer prematurely

Santander say we shouldn't reach an answer on Mr C and Ms C's case until the external investigations into B, it's linked companies and directors have finished.

But, I'm satisfied that I have enough evidence in order to reach a decision on whether Mr C and Ms C's complaint is covered by the CRM Code and what Santander's liability is under the CRM Code. For the reasons given above, I'm satisfied that Santander should refund Mr C and Ms C their outstanding loss of £8,652.80 and pay interest on that refund.

### **Putting things right**

To put things right I require Santander UK Plc to:

- Refund Mr C and Ms C £8,652.80 and
- Pay 8% simple interest per year on the refund, calculated from 15 business days after 19 January 2024 until the date of settlement.\*
- 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.

\* If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C and Ms C how much it's taken off. It should also give Mr C and Ms C a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint against Santander UK Plc and require them to compensate Mr C and Ms C, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Ms C to accept or reject my decision before 4 March 2025.

Lisa Lowe  
**Ombudsman**