

The complaint

Ms O complains that Santander UK Plc ('Santander') won't refund the money she says was lost as the result of a scam.

What happened

In 2013, Ms O heard about an investment on the radio. It involved a company I'll refer to as B, as well as a linked company I'll refer to as R. Ms O made a number of investments with B/R between 2013 and 2017, with no issues.

In 2020, Ms O decide to invest again. The investment involved B buying cars, which it then leased to customers who may otherwise have had trouble securing a leased car. Ms O was to receive a monthly return and the investment was for a three-year term.

In September 2020, Ms O made three payments to B for £10, £6,000 and £6,000 from an account held with another bank. She also made a payment of £1,990 from her Santander account.

Ms O received returns as expected in October 2020, November 2020, December 2020 and January 2021, of £267.36 per month – for a total of £1,069.44. All of these returns were paid into her account held with another bank.

In February 2021, Ms O received a letter 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, Ms O believed she'd been the victim of a scam. Through a professional representation, Ms O raised a fraud claim with Santander in 2023.

Santander investigated Ms O's fraud claim but declined to refund her. Santander say Ms O has a civil dispute with B.

Ms O wasn't happy with Santander's response, so she brought a complaint to our service.

An investigator looked into Ms O's complaint and recommended that Santander refund Ms O in full. The investigator explained that the evidence showed that Ms O's funds weren't used for their intended purpose and were obtained by dishonest deception, so her claim was covered by the Contingent Reimbursement Model Code ('CRM Code'). Under the CRM Code, Ms O was entitled a full refund as she had a reasonable basis for believing the investment was legitimate when she made the payments.

Following a review, the investigator amended the redress slightly, saying that Santander could fairly deduct returns of £151.86 from Ms O's loss, and refund the outstanding loss of £1,838.14. The remainder of the returns would be taken into account in relation to Ms O's complaint against the other bank she made payments from.

Santander didn't agree with the investigator's opinion, saying the CRM Code wasn't designed to cover these claim types and Ms O should raise a claim through the FSCS.

As the case couldn't be resolved informally, it was passed to me to review.

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).

Is Ms O 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 Ms O made her payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Ms O thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments and whether this was broadly in line with what Ms O 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.

Ms O was making the payments to B as part of an investment. Based on the evidence that Ms O had available at the time, there isn't anything to suggest Ms O 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 Ms O 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 Ms O's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that Ms O's funds weren't used for the intended purpose and that B obtained the funds through dishonest deception. So, I'm satisfied that Ms O's payments meet the definition of an APP scam and are covered by the CRM Code.

The CRM Code says that Ms O is 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 Ms O at the time she made the payments, so they can't rely on that exception to reimbursement.

I'm also satisfied that Ms O had a reasonable basis for believing the investment was legitimate. I say this because Ms O has previously successfully invested with B. 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 Ms O made her payments in September 2020. 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, Ms O is entitled to a full refund of £1,990. Apportioning the returns fairly between Santander and the other bank, means Santander can reduce the refund by £151.86. This means the net refund Ms O should receive is £1,838.14.

The interest award

Prior to the SFO completing their investigation, Ms O's payments 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 Ms O 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 Ms O 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 Ms O is now complaining to us about in connection with the activities of Santander.

As I have determined that this complaint should be upheld Ms O 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 Ms O has already made a claim at FSCS in connection with B, and in the event the FSCS pays compensation, Ms O is 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>

The point raised by Santander

Santander have raised a point that the CRM Code wasn't designed to cover these claim types and Ms O should raise a claim through the FSCS.

Santander should be well aware that where we're satisfied that the payments made meet the definition of an APP scam, the CRM Code is applicable, provided the other provisions of the CRM Code apply – which I'm satisfied they do in this case. I've considered Santander's point, but I'm satisfied that I can fairly consider Santander's liability for Ms O's loss under the CRM Code.

Putting things right

To put things right I require Santander UK Plc to:

- Refund Ms O £1,838.14 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 Ms O how much it's taken off. It should also give Ms O a tax deduction certificate if she asks for one, so she 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 Ms O, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 16 January 2025.

Lisa Lowe
Ombudsman