

The complaint

Ms A complains that Santander UK Plc won't refund the money she lost when she was the victim of a scam.

What happened

In 2019, Ms A found out about an opportunity to invest in a company which leased cars. She was told her investment would be used to fund a vehicle which would then be leased out, that she would receive fixed interest payments each month, and that the vehicle she funded would be secured in her favour by way of a fixed charge registered at Companies House. And, after checking the company's website and online reviews, she decided to invest and made a payment of £14,000 from her Santander account to account details she was given for the company.

Over the next twelve months, Ms A received the monthly interest payments as she was told she would. And so she agreed to invest with the company again and made another payment of £7,000 from her Santander account to the company's account details. I've set out the payments Ms A made below:

Date	Amount
9 August 2019	£14,000
25 August 2020	£7,000

Ms A continued to receive the monthly interest payments she was told he would until January 2021, but the payments then stopped. And when Ms A found out the company had gone into administration, she reported the payments she had made to Santander as a scam and asked it to refund the money she had lost.

Santander investigated and initially said this appeared to be a civil dispute between Ms A and the company. Ms A wasn't satisfied with Santander's response, so referred a complaint to our service. Since the case has been with our service Santander has now also said the car leasing company, and other associated companies, are under investigation by statutory bodies and so these investigations should be allowed to finish before an outcome is reached on the complaint.

One of our investigators looked at the complaint. They didn't think it was fair to delay the outcome of the complaint. They also said they thought the circumstances here met the definition of a scam and they were satisfied Ms A had no reason to suspect the investment wasn't legitimate. So they recommended Santander refund her losses in full. Santander disagreed with our investigator, so the complaint has been passed to me.

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 at 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.

Santander is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

Can Santander delay making a decision under the CRM code?

Santander has argued that the payment Ms A made is the subject of an ongoing complex investigation and it would be fair to wait for the outcome of this investigation before making a decision on whether to reimburse her. But I disagree.

The CRM code says firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

But this provision only applies before the firm has made its decision under the code – it can't seek to delay a decision it's already made. And Santander only raised this after it had already reached a decision on Ms A's claim in its outcome letter to her of 11 August 2023, when it said this appeared to be a dispute between her and the car leasing company. So I don't think Santander can now rely on this provision here.

And, in any event, 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 former company directors with fraud, on its website.

The Lending Standards Board has also said that the code does not require a criminal test to have been met 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 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 some time, I don't think it's fair for Santander to delay making a decision on whether to reimburse Ms A any further.

I'm aware that the Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against the car leasing company's parent company. More information about the FSCS's position on claims submitted against the parent company can be found on the FSCS's website.

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the car leasing 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 the parent company has conducted activities that have contributed to the same loss Ms A is now complaining to us about in connection with the activities of Santander.

As I'm minded to uphold this complaint for the reasons given below, Ms A should know that as she will be recovering compensation from Santander, she cannot claim again for the same loss by making a claim at the FSCS (however, if the overall loss is greater than the amount she recovers from Santander, she may be able to recover that further compensation by making a claim to the FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Ms A has already made a claim at the FSCS in connection with this matter, and in the event the FSCS pays compensation, Ms A is required to repay any further compensation she receives from her complaint against Santander, up to the amount received in compensation from the FSCS.

Our service and the FSCS operate independently, however in these circumstances, it's important that we and the FSCS are working together and sharing information to ensure that fair compensation is awarded. More information about how we share information with other public bodies can be found in our privacy notice on our website.

Whilst the FSCS may be taking on these cases against the parent company as a failed unregulated investment, it doesn't automatically follow that this was not a scam. This is not something that the FSCS would make a finding on before considering those claims.

Santander has also suggested that the FSCS process should be allowed to run before any complaints are determined. However, while our service has sometimes dismissed cases as better suited to another scheme, that is usually only where the complaints brought to us are against the same business the FSCS is accepting claims about – which isn't the case here. This complaint is against Santander for non-payment of a claim under the CRM code, whereas the FSCS is accepting claims against the car leasing company's parent company.

The FSCS is also the fund of last resort, and so should be the final place someone goes to for redress. Therefore, we would not necessarily expect customers to go to the FSCS before going to their bank. And our service has an obligation to investigate complaints brought to us.

Has Ms A been the victim of a scam, as defined in the CRM code?

The relevant definition of a scam from the CRM code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

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 in order to determine whether Ms A has been the victim of a scam as defined in the CRM code I need to consider whether the purpose she intended for the payments was legitimate, whether the purposes she and the company she paid intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what she's told us, I'm satisfied Ms A made the payments here with the intention of investing with the car leasing company. She thought her funds would be used to purchase vehicles which would then be leased out, and that she would receive returns on her investment. And I haven't seen anything to suggest that Ms A didn't think this was legitimate.

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 payment it had agreed with Ms A.

The correspondence Ms A received from the company said her capital would be used to fund a specific vehicle, and prominently highlighted that the vehicle she funded would be secured in her favour by way of a fixed charge registered at Companies House. But the Financial Conduct Authority (FCA)'s supervisory notice to one of the connected companies said that, while the companies had around 1,200 customers and had entered around 1,200 leases, they had only registered 69 vehicles at Companies House – which suggests the vast majority of the vehicles funded weren't secured in the way Ms A was told hers would be.

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 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 Ms A's favour over any vehicle with the company following her 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 Ms A'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 Ms A to believe she was making. And so the purpose the company intended for the payments Ms A made wasn't aligned with the purpose Ms A 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 Ms A 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 from the CRM code.

Is Ms A entitled to a refund under the CRM code?

As I explained above, Santander is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Ms A fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;

- o the payment was for genuine goods or services; and/or
- o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

From what I've seen, the communication Ms A had with the car leasing company and the documents she received about the investment all appear to have been relatively professional and looked legitimate. The way Ms A was told the investment would work doesn't appear to be suspicious and the returns she was told she would receive don't appear to be too good to be true. 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 had received the returns they were told they would. So I don't think there was anything about the investment that should have caused Ms A significant concern, or that Santander has established that she made the payments without a reasonable basis for belief that the investment was legitimate.

Santander also hasn't suggested that Ms A ignored an effective warning when she made the payments to the car leasing company. So I don't think Santander has established that Ms A ignored an effective warning in relation to the payments either.

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 Ms A lost in full.

Redress

As Ms A received a number of monthly interest payments back from the car leasing company, I think it would be fair for these payments to be deducted from the amount Santander has to refund her. From what I've seen, Ms A made two payments to the car leasing company, totalling £21,000, and received 22 interest payments back, totalling £5,073.45. So her remaining loss to be refunded is £15,926.55.

I also don't think any action I would've expected Santander to take would have prevented Ms A 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 Ms A'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 Ms A's claim and refunded her 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.

My understanding from the administrator's statement about the car leasing company and connected companies is that the company owed over £40 million to investors that it was unable to pay – and that this far outweighs its assets. So it is far from certain that complainants will receive anything back at all. But it is possible Ms A may recover some further funds in the future so in order to avoid the risk of double recovery, if it wishes, Santander is entitled to take an assignment of the rights to all future distributions under the administrative process before paying the award.

My final decision

For the reasons set out above, I uphold this complaint and require Santander UK Plc to:

- Refund Ms A the £15,926.55 loss she suffered as a result of this scam
- Pay Ms A 8% simple interest on that refund, from 15 days after 19 January 2024 until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 6 March 2025.

Alan Millward
Ombudsman