

Complaint

Mrs M is unhappy that Santander UK Plc didn't reimburse her after she told it she'd fallen victim to an investment scam.

Background

In 2020, Mrs M learned about an investment opportunity via a family member. The opportunity was provided by a company called Buy2LetCars/Raedex Consortium Ltd. Under the scheme, investors were to provide the funds for the acquisition of new vehicles. Those vehicles would then be leased to members of the public. The proceeds would benefit the investor. The company told investors that they'd receive monthly payments for 36 months. In month 37, the leased car would be returned to the company.

Amongst the various assurances she was given by the company, she was told the investment was "asset backed" – in other words, her funds were associated with and secured against a specific vehicle. That meant her investment was more secure. She decided to go ahead with the investment and used her Santander account to make several payments to the company.

She has complained specifically about the following three:

- 7 August 2020 for £14,000
- 25 November 2020 for £14,000
- 15 February 2021 for £14,000

There were payments prior to this point, but Mrs M has chosen not to complain about the bank's role in connection with those payments.

Unfortunately, things didn't go according to plan. The company later failed and Mrs M determined that she must've fallen victim to a scam. She complained to Santander, but it didn't agree to refund her losses. It didn't agree that this was a scam – rather, it considered it to be a legitimate investment that had failed. Mrs M, therefore, wasn't entitled to any compensation under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code.

Mrs M wasn't happy with that response and so she referred her complaint to this service. It was looked at by an Investigator who upheld it. Santander disagreed with the Investigator's view. In addition to the arguments it had already raised when it responded to the initial complaint, it said that it was premature to decide this case given that there are ongoing legal proceedings. It also said that, given that there are other potential avenues through which Mrs M might receive redress, deciding the complaint now risks overcompensating her. As Santander disagreed with the Investigator's view, the complaint has been passed to me to consider.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable

in the circumstances of this complaint.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. However, that isn't the end of the story. Santander has signed up to the CRM Code. That Code requires signatories to pay refunds to victims of authorised push payment ("APP") scams in all but a limited set of circumstances.

The CRM Code doesn't cover all payments. For these payments to fall within its scope, they must meet the relevant parts of the CRM Code's definition of an APP scam. Santander has said that the evidence here isn't strong enough to say that Mrs M fell victim to an APP scam, rather than a private civil dispute. It says it would be premature to conclude otherwise.

It's important to note that there are a number of potential reasons (other than an APP scam) for a company to fail to meet its contractual obligations. That might happen, for example, where a business has a problem with cashflow. A business can fail or be mismanaged so that its promises aren't kept. That doesn't necessarily demonstrate an intention to commit fraud (which is what is needed to show that the CRM Code should apply). Instead, for a payment to be covered, it must meet the Code's definition of an APP Scam. In this context, that would require that the purpose for which the company procured the payments was different to what Mr S believed due to dishonest deception.

The key factor is what the intentions of the company were at the time of the payments. I obviously can't know what was in the mind of the individuals selling the investment to Mrs M at the time. I have to infer what those intentions most likely were from what the other available evidence shows. I also need to be able to exclude, on the balance of probabilities, the alternative possibility that this was simply a matter of the company breaching its legitimate contract for a legitimate reason. Put another way, I need to decide whether the available evidence shows it is most likely that the company set out to defraud Mrs M with criminal intent.

That is a high bar to meet. Nonetheless, I'm satisfied that the evidence shows that this was a scam and I'll explain why. I understand Buy2Let Cars claimed that investor funds would be allocated to specific cars. There would be a legal charge over the specific vehicle acquired. That doesn't appear to be what happened in practice. The FCA's supervisory notice to one of the connected companies said that, while the companies had around 1,200 investors, they had charges secured against only 69 vehicles. In other words, the overwhelming majority of the cars acquired by Buy2Let Cars weren't secured in the way Mrs M was told they would be.

The FCA also checked a sample of the vehicles the companies held against the DVLA database. It found that a large proportion of these vehicles were second hand. This was inconsistent with the way the company explained its operating model which relied on it securing significant discounts on new cars. It also found other inconsistencies. Some leases started before the first registration of their associated vehicles. For some, the associated vehicle doesn't appear to have existed on the DVLA database at all. The FCA also said the company valuation of their stock of vehicles wasn't at all realistic. In addition to that, a report by the administrators of one of the connected companies found that it had entered into around 3,600 individual agreements with investors. Each agreement should've been

associated with a specific vehicle. However, the company only had legal title to around 600 vehicles.

For these reasons, I'm satisfied the evidence shows that the company wasn't operating in the way it had told Mrs M it would. The features of the investment she believed she was making were absent. The purpose for which the company procured the payments from her was, therefore, not aligned with the purpose Mrs M had in mind for those payments.

The SFO has also said that the former company directors are accused of providing investors with false information and encouraging people to invest despite knowing their investments weren't really backed up by individual cars. In the light of that, I'm persuaded that it's more likely than not that the discrepancy between the company's purpose in procuring the payment and Mr S's in making it was the result of dishonest deception on the part of the company. As a result, I'm satisfied the circumstances here meet the definition of an APP scam under the CRM code.

Should Mrs M be reimbursed under the CRM Code?

I've gone on to consider whether Santander was required to reimburse Mrs M under the terms of 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 Mr S fell victim to, in all but a limited number of circumstances. It is for the firm to establish that one of the 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; or
- The customer made the payment without a reasonable basis for believing that:
 - the payee was the person the customer was expecting to pay;
 - the payment was for genuine goods or services; and/or
 - the person or business with whom they transacted was legitimate.¹

Santander hasn't said that Mrs M would've seen a warning when making any of these payments, so the first potential exception doesn't apply here. I've considered whether Mrs M made these payments with a reasonable basis for believing the investment to be a legitimate one. From what I've seen, the communication she had with the company and the documents she received about the investment all appeared professional and legitimate. That is reflected in the same information received by other victims of this scam.

The way Mrs M was told the investment would work isn't inherently problematic and she wasn't promised returns that were objectively too good to be true. In addition to that, the company had been operating for several years and its partner company was authorised by the FCA.

Overall, I'm not persuaded there was anything about the investment that should have caused Mrs M significant concern or that there's any indication that Mrs M made these payments without a reasonable basis for believing the investment to be legitimate. It follows that Santander should now reimburse her under the CRM Code.

¹ There are other exceptions in the CRM Code, but they aren't applicable here.

Other issues

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 Mrs M is now complaining to us about in connection with the activities of Santander.

As I have determined that this complaint should be upheld Mrs M should know that as she will be recovering compensation from Santander, she 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 Mrs M has already made a claim at FSCS in connection with Raedex, and in the event the FSCS pays compensation, Mrs M is required to repay any further compensation she receives from her 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>

Final decision

For the reasons I've explained above, I uphold this complaint. If Mrs M accepts my final decision, Santander UK Plc needs to refund the payments made in connection with this scam that are listed above, less the monthly returns that were payable in connection with those specific agreements. It should not deduct any returns that she received in connection with agreements that aren't the subject of this complaint.

It should also add 8% simple interest per annum to those payments calculated to run from 9 February 2024 until the date any settlement is paid. It's possible that funds could be recovered at a later date via the administrators and Santander is entitled to ask Mrs M to sign an indemnity to cover this eventuality.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 20 March 2025.

James Kimmitt
Ombudsman