

The complaint

Ms M complains that Santander UK Plc won't reimburse her, after she made payments towards an investment that she now considers to have been a scam.

Ms M is professionally represented in bringing her complaint to our service, but for ease of reading I'll refer to all submissions as being made by Ms M directly.

What happened

Ms M has explained that she was looking to invest and was recommended a company, which I'll refer to as 'A', by a friend to advise her. Ms M met in person with the director of A and he recommended a firm for Ms M to invest with, which she did. As the investment performed as expected, Ms M's confidence in A grew. The director of A then suggested Ms M invest with it directly, promising guaranteed returns of 10-12% per annum. Ms M says she agreed to this suggestion and told A she wished to invest in ethical, UK based firms.

Ms M made six payments to A, between January and November 2021, totalling £90,000. From the paperwork Ms M has provided, it appears that the agreements between Ms M and A were in the form of loan notes, which set out how much Ms M had loaned A, the term of the loan and how much and often to expect funds returned.

Ms M initially received returns from A, although these were more sporadic than agreed and of varying values. Ms M has also provided evidence that she had to chase A on numerous occasions to send her funds and would receive different excuses as to why a payment hadn't been made on time. In total, Ms M received £10,600 in returns from A. However, when A failed to provide further returns, Ms M researched the director and found negative online reports, which led her to believe she had fallen victim to a scam. She therefore raised a claim with her bank, Santander.

Santander didn't provide a response in the timeframes permitted and so Ms M referred her complaint to our service. An investigator didn't uphold Ms M's complaint. She didn't think there was sufficient evidence that Ms M was scammed, rather than this being a failed investment and therefore a civil dispute between Ms M and A.

Ms M disagreed, so the complaint has been referred to me for a final decision.

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 Board's 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 CRM Code where they have been the victim of an APP scam – as defined within the CRM Code. So if I am not persuaded that there was a scam then I will not have a basis to uphold the complaint.

The relevant definition of a scam in accordance with 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, it doesn't cover a genuine investment or a genuine business that subsequently failed.

Therefore, in order to determine whether Ms M 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 A intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of A.

One of the key issues here in determining whether a scam has taken place is that the purpose for payments wasn't clearly defined in any documentation I've seen, prior to Ms M making payments to A. The loan notes between both parties state what returns Ms M should receive, but do not indicate where or how Ms M's money should be utilised. Therefore, in essence, there is no concrete agreement I can refer to when concluding that the actions A took with Ms M's money *didn't* align with what was agreed. Ms M has stated she requested her funds were to be invested in UK ethical companies, but the only reference I have to this is from an email Ms M sent to A after payments had been made. It's therefore difficult to tie this to the intentions of either party at the point payments were made.

In cases where there's a clear agreement between parties on where money is to be invested, it's somewhat simpler to review what *did* happen to those funds and conclude whether the intended payment purpose was met, but as this didn't happen here, it's difficult to determine - even with the benefit of hindsight and reviewing beneficiary statements – that funds were illegitimately moved on in a way that proves A's intention was to never return funds as agreed to Ms M.

I appreciate Ms M's point that A's director has been linked to other businesses associated with mis-selling, or where concerns have been raised with other relevant schemes. I'm also aware that there is an ongoing Police investigation into the director of A. While there may be merit to Ms M's concerns regarding businesses associated with A, there may also be other, equally possible reasons for A failing to meet its agreement with Ms M here that haven't been yet ruled out. It's also my understanding that further action hasn't yet been taken by the Police against any parties involved in relation to this investment.

Ms M also raised concerns that A wasn't registered with the Financial Conduct Authority. However, a business doesn't need to be regulated to issue a loan note and so this act, in and of itself isn't sufficient to conclude that A acted outside of regulatory requirements.

There are a number of potential reasons (other than an APP scam) for a breakdown in a relationship between two parties and for such a dispute to exist. And unfortunately, businesses (such as A) can fail or be mismanaged such that contracts are breached and agreed returns aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

Unfortunately, it's not possible to know with certainty what A's intentions were when Ms M made her payments to it – but before I can consider whether Santander is liable for any of Ms M's losses, I'd first need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Ms M and A. That also means being able to exclude, on the balance of probabilities, the alternative possibility that this is simply a matter of A breaching its legitimate contract with Ms M through financial mismanagement or other reasons.

Or to put this another way, that means deciding whether the available evidence shows it is most likely that A set out to defraud Ms M with criminal intent. That is a high bar to meet. Ultimately, without clearer evidence of how Ms M's money *ought* to have been utilised, it becomes difficult to determine that A deceived Ms M with intent from the outset for actions it subsequently took.

I appreciate how frustrating and disappointing this answer will be. Ms M has lost a lot of money as a result of this investment. But I can't exclude the possibility that A entered the agreement in good faith, intending to fulfil the contract and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't allow me to conclude, when weighing up these alternative possibilities, that it's more likely A intended to steal her money from the outset and never had any intent of fulfilling the arrangement in full or in part.

That means that I can't fairly hold Santander responsible for the loss suffered here by Ms M. I can't fairly tell Santander to pay her the money she's lost, because I don't think it has treated her unfairly or was otherwise at fault here. This also means I can't fairly comment on whether Santander ought to have intervened in any payments Ms M made to A, as I haven't ultimately determined that they were scam payments.

Future police investigations may uncover new evidence or change the basis on which this case has been considered up until now. However, I have to decide the case on the facts and information currently available to me. Based on the evidence currently available, I'm not able to conclude there is sufficiently persuasive evidence that shows Santander was wrong in failing to provide Ms M with a refund for her losses under the CRM Code.

If new material information does come to light, at a later date, then a new complaint can be made to Santander. But I'm satisfied, based on the available evidence that I have seen and been presented with by all parties, that this is a civil dispute.

My final decision

My final decision is that I don't uphold Ms M's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 19 March 2025.

Kirsty Upton
Ombudsman