DRN-5194548

The complaint

Mr and Mrs V complain that Santander UK Plc ("Santander") won't refund the money they lost when they fell victim to a scam.

What happened

Mr and Mrs V were looking for an investment opportunity when they heard about a company I will refer to as "B".

Interested, Mr and Mrs V reached out to B for more information and ultimately decided to invest. Mr and Mrs V were told that for every £14,000 they invested, a car would be bought on their behalf and leased out by a connected company – "Raedex". They would receive monthly returns and a final gross payment at the end of the agreed term. The vehicle itself would act as security for the investment.

Mr and Mrs V originally began to invest with B in 2015. But only the investments made from August 2019, and their associated returns, form part of this complaint.

From August 2019, Mrs and Mrs V made investments totalling £112,000. They received returns on these investments totalling £23,635.68. So, Mr and Mrs V's total loss now amounts to £88,364.32.

Mr and Mrs V now believe they've been the victims of a scam. And they made a complaint to Santander, via their representatives, in December 2023.

Santander didn't agree to refund Mr and Mrs V's losses and so the complaint was bought to this service and one of our investigators looked into things. They said what had happened to Mr and Mrs V met the Contingent Reimbursement Model (CRM) Code's definition of a scam. So, they recommended Santander refund Mr and Mrs V their overall loss. They also thought Santander should pay 8% simple interest per annum from 15 days after the date the directors of B were charged by the SFO to the date of settlement.

Mr and Mrs V agreed with the investigators opinion but Santander didn't. It said it didn't think it was reasonable for this service to reach a decision on this complaint in the absence of further information about what had taken place. It also said that if a decision was made at this stage, there was a risk Mr and Mrs V would be over reimbursed later down the line.

As an informal agreement could not be reached, the case has now been passed to me to decide.

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

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met.

Is the CRM Code definition of an APP scam met?

Firstly, I have considered whether Mr and Mrs V's claim falls within the scope of the CRM Code, which defines an APP scam as:

...a transfer of funds executed across Faster Payments…where:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or
(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

To decide whether Mr and Mrs V were the victims of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr and Mrs V thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments, and whether this broadly aligned with what Mr and Mrs V understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

From the evidence I have seen I'm satisfied Mr and Mrs V intended to invest in B. They understood that B would use the funds they paid to buy cars that would be leased, and they would receive returns on their investment. I haven't seen anything to suggest that Mr and Mrs V didn't consider this to be a legitimate purpose.

I've then gone on to consider the purpose B had in mind at the time it took the payments.

After careful consideration, I'm not satisfied B intended to act in line with the purpose agreed with Mr and Mrs V. I will explain why in more detail below.

In its first supervisory notice in respect of Raedex in February 2021 the FCA noted it had entered into approximately 1,200 leases in the period between January 2018 to January 2021, but only 69 charges had been registered.

In the same notice, the FCA said it had conducted a sampling of Raedex's leaseholder list against the DVLA database and identified various discrepancies between its business model and vehicle inventory. The FCA report referred to the fact that 55 cars appeared to be second hand (although its business model relied to a large extent on securing heavy discounts on new vehicles), to vehicles that couldn't be found, and to leases entered into at a date significantly before the vehicle was put on the road. The FCA also concluded that the group's liabilities significantly exceeded its assets, and its business model was fundamentally unsustainable.

I have also seen evidence from an SFO news release dated 19 January 2024 which confirms that two directors of B have been charged in relation to the car lease scheme. The news release noted that directors were accused of providing those who signed up with false information, encouraging people to pay in with false information whilst knowing that investments weren't backed up by the cars they had been promised.

The SFO also noted that the investment was backed by a tangible asset – a car. In Mr and Mrs V's case the "Vehicle Funding Forms" they were provided with when they made their payments didn't specify a particular vehicle but they refer to the number of units being funded. The evidence I have referred to above shows this aspect of the investment wasn't being performed.

A report by the administrators of one of the connected companies said that the total number of loan agreements relating to 834 investors was 3,609. But the number of vehicles held by the company at the time it went into administration was 596, equating to less than one car for every six loan agreements.

Overall, I'm satisfied B didn't provide the investment it offered to Mr and Mrs V and didn't follow its business model. The purpose B intended when it took Mr and Mrs V's funds wasn't aligned with theirs. Given the information provided by the SFO in respect of what the directors of B are accused of, I'm persuaded that the purposes each party had in mind for the payments weren't aligned as a result of dishonest deception. This means that I'm satisfied the CRM Code definition of an APP scam has been met.

Should Mr and Mrs V be reimbursed under the CRM Code?

As I've said above, Santander is a signatory to the CRM Code which requires firms to reimburse victims of APP scams like this one unless it can establish that it can rely on one of the listed exceptions set out in it. 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 services; and/or the person or business with whom they transacted was legitimate.
- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

It is for Santander to establish that an exception to reimbursement applies. Here, Santander hasn't considered Mr and Mrs V's complaint under The Code. So, it hasn't demonstrated that any of the listed exceptions can fairly be applied.

For the sake of completeness, I'll briefly cover why I'm not persuaded any of the listed exceptions can be fairly applied regardless.

Mr and Mrs V say they first heard about B when it appeared to be well-established. At this point others had received returns on their investments, and they ultimately did too. They had been provided with Vehicle Funding Forms that looked legitimate and the rate of return didn't appear to be too good to be true. So, I don't think there was anything that ought reasonably to have caused them concern at the time of making the payments.

Santander hasn't said whether a scam warning was provided to Mr and Mrs V prior to the scam payments being made. So, it hasn't demonstrated that Mr and Mrs V ignored any effective scam warnings.

I've also thought about whether there is any other reason why Santander should reimburse Mr and Mrs V. But even if I conclude that Santander ought reasonably to have intervened and asked Mr and Mrs V probing questions about the nature of the payments and provided scam advice, I don't consider the scam would have been uncovered and their loss prevented. I say this because I don't think there was enough information available at the time that would have led Santander to be concerned that Mr and Mrs V were at risk of financial harm.

Is it appropriate to determine Mr and Mrs V's complaint now?

The 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 B's former company directors with fraud, on its website.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence already available. And I'm conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I'm required to apply here – the balance of probabilities.

The LSB has said that the CRM Code doesn't require proof beyond reasonable doubt that a scam has taken place 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, in order to determine Mr and Mrs V's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it's more likely than not that Mr and Mrs V were the victims of a scam, rather than a failed investment. I'm required to determine complaints quickly and with minimum formality. In view of this, I don't think it would be appropriate to wait to decide Mr and Mrs V's complaint unless there is a reasonable basis to suggest that the outcome of the related court case may have a material impact on my decision over and above the evidence that is already available. Santander has not clearly articulated whether it considers this may be the case.

Santander has also raised concerns over the possibility of Mr and Mrs V being compensated twice for the same loss. But I don't know how likely it is that any funds will be recovered as part of ongoing proceedings. I'm aware that there is an ongoing administration process – including liquidation. This might result in some recoveries; but given this would initially be for secured creditors, I think it's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive. That said, 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 the recommended award.

I'm also aware that 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 and Mrs V are now complaining to us about in connection with the activities of Santander.

As I'm upholding this complaint, Mr and Mr V 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 recovers 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 and Mrs V hav already made a claim at FSCS in connection with this matter, and in the event the FSCS pays compensation, Mr and Mrs V 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's 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.financialombudsman.org.uk/privacy-policy/consumer-privacy-notice

Finally, I want to highlight that whilst the FSCS may be taking on these cases against Raedex 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. As Santander can ask Mr and Mrs V to undertake to transfer to it any rights they may have to recovery elsewhere, I'm not persuaded that these are reasonable barriers to it reimbursing them in line with the CRM Code's provisions.

So as the SFO has reached an outcome on its investigation, I don't think it's fair or necessary to wait until the outcome of the related court case (which is scheduled to commence in almost two years). Nor do I consider it's necessary to wait for the administration process to complete or wait for a claim with FSCS to be made.

In summary, I don't think it's necessary to wait until the outcome of the court case for me to reach a fair and reasonable decision. And I don't think it would be fair to wait for other investigations to complete before making a decision on whether to reimburse Mr and Mrs V either.

Putting things right

Santander should now refund Mr and Mrs V their total outstanding loss minus any returns received.

Interest

I'm not persuaded Santander acted unreasonably in not upholding Mr and Mrs V's claim when it was first reported in December 2023. However, at the conclusion of the SFO investigation I consider Santander should have assessed all the available evidence and made a decision within 15 business days of 19 January 2024. So, Santander should pay interest at the rate of 8% simple from 15 business days after the SFO published its outcome on 19 January 2024 on the above refund.

My final decision

I uphold this complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V and Mrs V to accept or reject my decision before 26 April 2025.

Emly Hanley Hayes
Ombudsman