

## The complaint

Mr S complains that Santander UK Plc ('Santander') won't refund money he says was lost as the result of an investment scam.

## What happened

The background to this complaint isn't in dispute, so I'll provide a brief summary.

In 2019, Mr S entered into an investment with a company I'll refer to as H. H were offering loan notes on various property developments. Mr S says he found the investment after looking online.

Mr S made the following payments from his Santander account.

Date	Details of transaction	Amount
13.11.2019	Payment to H	£20,000
14.11.2019	Payment to H	£10,000
28.11.2019	Payment to H	£10,000
29.11.2019	Payment to H	£20,000

When Mr S's investment matured, he contacted H to withdraw the funds, but says he was given excuses and never received his money back.

Mr S, through a professional representative, raised a fraud claim with Santander in June 2024. Santander investigated Mr S's claim but declined to refund him saying he had paid a genuine company who had ceased trading.

Mr S wasn't happy with Santander's response, so he brought a complaint to our service.

An investigator looked into Mr S's complaint but didn't recommend that Santander refund him. The investigator felt H was a legitimate investment that failed, so it wasn't an APP scam as defined by the Contingent Reimbursement Model Code (CRM Code).

Mr S's representative disagreed with the investigator's opinion and provided a substantive response. The investigator addressed the points raised by S's representative, but they asked for the case to be reviewed by an ombudsman. They asked the ombudsman to consider the following points:

- There were sufficient indicators that should've prompted Santander to intervene when the payments were made.
- Given the number of complaints by multiple investors, there is sufficient evidence to suggest that Mr S was the victim of an APP scam.
- Mr S's vulnerability hasn't been taken into account.

## **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.

I'd like to reassure Mr S that I have carefully reviewed and considered all of the evidence that has been provided, as well as the responses to the investigator's view. But I've focused my decision on what I consider to be the crux of the complaint, the answer I've reached and how I've reached it.

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 2017 (PSR's).

### Is Mr S 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 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 Mr S made the payments, meets the definition of an APP scam, I need to consider:

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

Mr S was making payments to invest with H, who were a property developer. I haven't seen anything that would suggest that Mr S didn't think this was legitimate.

So, I've gone on to consider what purpose H had in mind and whether it was in line with what Mr S thought.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H, its directors and any linked businesses. The key information to this case is:

- H completed on three separate developments. It also had other developments it was working on, which it sold to developers after experiencing financial difficulties. This persuades me that H were operating a genuine business at the time Mr S made his payments.
- I haven't seen any evidence that investors' funds weren't used for the intended purpose, or that the company was operating a Ponzi scheme. There has been a suggestion that this is the case by Mr S. But I haven't seen evidence that supports this, for example, from the liquidator.
- I appreciate that H have gone into administration. But a failed firm or investment, in

and of itself, isn't sufficient to establish that the business, or those operating it, had a different purpose for the funds when they were obtained from the consumer.

- H has stopped all communication with investors and Mr S didn't receive his returns or capital back. But this doesn't prove that H took his money with a different purpose in mind.

Taking all these points into consideration as a whole, I'm not satisfied there is sufficient evidence to say Mr S's funds weren't used in the manner agreed by H or that the purpose H had in mind was different to Mr S's. On that basis, I'm not satisfied that I can fairly conclude that Mr S's payments meet the definition of an APP scam as set out in the CRM Code.

Mr S has provided evidence including, a counsel's opinion from a KC, a forensic accountant report and a junior counsel's opinion. Also, he says it's unfair to say that he wasn't the victim of a scam, due to incomplete information from the liquidators or the police. But the onus is on Mr S to provide sufficient evidence to prove that H took his funds with a different purpose in mind, or that his funds weren't used by H for the intended purpose. For the reasons already given, I'm not satisfied that Mr S's evidence shows that.

As I'm not satisfied that Mr S's payments meet the definition of an APP scam, I can't fairly ask Santander to refund him under the CRM Code.

If material new information comes to light at a later date, for example from the police or liquidator, Mr S can ask Santander to reconsider his claim.

#### Is there any other reason I could ask Santander to refund Mr S?

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.

Also, I'd expect Santander to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

Having reviewed Mr S's statements, I'm not satisfied that the payments he made were unusual and out of character. I say this as he had regularly made payments of between £10,000 and £20,000 in the prior six months. So, I wouldn't have expected Santander to have identified a potential risk of financial harm or intervened when these payments were made.

However, even if I was satisfied that Santander should've intervened, it wouldn't change the outcome. As, at the time Mr S made these payments, the information available suggested that H was a legitimate property developer. So, I don't think questioning by Santander would've identified any concerns about the payments Mr S was making.

#### Vulnerability

Mr S says he was vulnerable at the time he made the payments as he was approaching retirement and was an inexperienced investor.

As I'm not satisfied that Mr S's payments are covered by the CRM Code, I can't apply the vulnerability provisions under the Code. And, I haven't seen any evidence that Santander

were made aware of Mr S being vulnerable prior to making his payments. As they weren't made aware, I wouldn't have expected them to have taken additional steps as a result. Also, the vulnerabilities that Mr S has specified wouldn't persuade me that Santander should've intervened differently or mean that I can fairly hold them liable for his loss.

### Compensation

Mr S has asked for £1,000 compensation, but he hasn't highlighted any failings in the service he received from Santander. I can't make a compensation award against Santander as a result of the distress caused by the scammer, only in relation to errors they've made or poor levels of customer service. Based on what I've seen, I'm not satisfied that Mr S is entitled to compensation.

I'm really sorry to disappoint Mr S, but I'm not satisfied that I can fairly hold Santander liable for his loss or ask them to refund him.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 August 2025.

Lisa Lowe  
**Ombudsman**