

The complaint

Mr E complains that Santander UK Plc ('Santander') won't refund the 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 E was cold called and offered an investment with a company I'll refer to as H. H were offering loan notes on various property developments.

Mr E says he was offered cashback on his initial investment and received a credit of £1,000. But, after receiving this money, he was pressured into making a further investment.

Mr E made the following payments from his Santander account.

| Date | Details of transaction | Amount |
|-----------|------------------------|---------|
| 11.2.2019 | Payment to H | £13,000 |
| 13.3.2020 | Payment to H | £10,000 |

Mr E didn't receive any returns or the capital he invested with H back. So, through a professional representative, he raised a fraud claim with Santander in July 2024.

Santander investigated Mr E's claim but declined to refund him, saying he paid a genuine company, and they aren't liable for his loss.

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

An investigator looked into Mr E's complaint but didn't recommend that Santander refund him. The investigator said:

- The first payment isn't covered by the Contingent Reimbursement Model Code (CRM Code) as it wasn't introduced until May 2019, after the payment was made.
- The second payment was made after the CRM Code was introduced. But the definition of an APP scam hadn't been met, so Mr E wasn't entitled to a refund under the CRM Code.
- Neither payment was unusual or out of character, so the investigator wouldn't have expected Santander to intervene. But, even if they had, all of the available information suggested that H was a genuine company. So, Santander wouldn't have been concerned that Mr E was at risk of financial harm from fraud.
- While Mr E may've been vulnerable, the CRM Code vulnerability provisions can't be applied as neither payment is covered by the Code.

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

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 E that I have carefully reviewed and considered all of the evidence that has been provided. 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).

The first payment Mr E made was in February 2019, which is prior to the introduction of the CRM Code on 28 May 2019. As the CRM Code can't be applied retrospectively, I can't consider Mr E's loss under the Code for the first payment.

Is Mr E entitled to a refund for the first payment?

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.

Santander didn't intervene when Mr E made the first payment, but even if they had, I'm not satisfied it would've prevented his loss. I say this because all of the information available at the time suggested that H were a genuine property developer, and a UK incorporated company. There wasn't any information available in 2019, which would've concerned Santander.

Santander may've been concerned that Mr E was cold called, but an unregulated introducer, doesn't mean that the investment isn't genuine. And I don't think that his information would've been enough to override the other available information about H.

So, if Santander had asked questions about the investment, I'm not satisfied they should've identified a potential risk of financial harm from fraud. On that basis, I can't fairly say they would've prevented Mr E's loss.

Is Mr E entitled to a refund for the second payment 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 E made the second payment, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mr E thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payment and whether this was broadly in line with what Mr E 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 E was making the second payment to invest with H, who were a property developer. I haven’t seen anything that would suggest Mr E 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 E 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 as a genuine business at the time Mr E made the second payment.
- 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 E, but I haven’t seen evidence that supports this, for example, from the liquidator.
- Mr E say H was paying a very high commission to introducers. But this doesn’t necessarily mean that H was a scam. Whether or not the introducers were regulated doesn’t show that H intended to scam investors, or that H hadn’t planned to invest the money into development projects with the intention to make a profit to provide the relevant return to investors.
- I appreciate that there are a number of subsidiary companies involved in the H group. But I haven’t seen evidence that these companies weren’t using investors’ funds for the intended purpose.
- While H may not have filed accounts since 2018 or had any of their accounts audited, this doesn’t persuade me that H intended to scam investors. A failed business or financial mismanagement of a business, 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.

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

Mr E has provided evidence including, a counsel's opinion from a KC, a forensic accountant report and a junior counsel's opinion. But this evidence doesn't prove that H took Mr E's funds with a different purpose in mind, that the funds weren't used for their intended purpose, or that H set out with the intention to scam investors.

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

But I also need to consider whether Santander could've prevented the loss at the point the second payment was made.

Taking into account the relevant rules, regulations and what I consider to be good industry practice, as set out in detail above, I'm not satisfied that intervention by Santander at the time of the second payment would've prevented Mr E's loss. I say this for the same reasons as I explained in relation to the first payment.

I'm not satisfied that if Santander had asked questions, that they would've identified a potential risk of financial harm from fraud. So, I can't fairly say that intervention by Santander would've prevented Mr E's loss.

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

Vulnerability

Mr E says he was vulnerable at the time he made the payments, as he was taking a considerable number of painkillers and other medication for his health conditions.

But, as I'm not satisfied that Mr E'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 E being vulnerable prior to him making the payments. As Santander weren't made aware, I wouldn't have expected them to have taken additional steps as a result.

I'm really sorry that Mr E has suffered a financial loss and to hear of the severe impact losing this money has had on him. But, having carefully considered the evidence, I'm not satisfied that I can fairly hold Santander liable 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 E to accept or reject my decision before 14 August 2025.

Lisa Lowe
Ombudsman