

## **The complaint**

Mr and Mrs H complain that Santander UK Plc did not reimburse the £150,000 they say they lost to a scam.

## **What happened**

Mr and Mrs H attended a property seminar and met an individual who was giving a talk. This individual let them know about an investment opportunity with a company I'll refer to as 'MSD'. The director of MSD was an individual I will refer to as 'HB'. MSD had plans to redevelop a plot of land into apartments for significant profit and had planning permission from the council. After receiving a valuation report for the investment, Mr and Mrs H signed a loan agreement with MSD, to lend it £150,000 for 18 months, with an optional 6-month extension, and an expected return of 12% per annum. HB also signed a personal loan guarantee for the funds, which was witnessed by a lawyer. Mr and Mrs H transferred £100,000 on 4 November 2021 and another £50,000 on 5 November 2021 from their joint Santander account.

In October 2022, Mr and Mrs H were informed by HB there was a completion date for the property as he was selling to another developer, and they were due to get their capital and returns back which totalled around £170,000. However, HB then said he had run into issues and instead said he would repay them in instalments, though these payments did not materialise. Mr and Mrs H agreed to pay some solicitors fees to help get a 'deal over the line' for the property but these were paid from a separate bank account with a third-party provider. When Mr and Mrs H still did not receive any of their money back, they felt they had been the victim of a scam.

Mr and Mrs H raised a scam claim with Santander via a representative. Santander issued a final response letter on 12 November 2023 in which they explained MSD had entered liquidation and had been assigned an administrator. Because of this, they felt MSD was a genuine company that had failed so they saw the claim as a civil dispute and not a scam and they did not look into it further.

The complaint was referred to our service and Mr and Mrs H's representative highlighted HB had been disqualified from acting as a director for 11 years from November 2022 to December 2023. And that he had been taken to court for fraud by another investor for a separate project.

Our Investigator looked into the complaint and assessed it under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. They issued a view explaining while HB had been barred from acting as a director, this was in relation to him fraudulently claiming loans and this was not linked to an alleged fraud about the investment Mr and Mrs H made. While they acknowledged there were other complaints about HB and a criminal proceeding, these were about other developments. On balance, they did not think there was enough evidence to show this was a failed investment as opposed to knowing fraud where MSD never intended to develop on the land.

Mr and Mrs H's representatives did not agree with the findings. They felt that the balance of

probabilities showed it was more likely MSD had committed fraud and felt the receiving bank information would confirm this. They also explained the third-party bank that Mr and Mrs H used to send the solicitors fees at a later date had provided a 50% refund and other banks had provided refunds to other customers.

As an informal agreement could not be reached the complaint has been passed 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.

It isn't in dispute that Mr and Mrs H authorised the payments of £150,000. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that they are liable for the transactions. But they say that they have been the victim of an authorised push payment (APP) scam.

Santander has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:

*...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.*

I've therefore considered whether the payments Mr and Mrs H made to MSD fall under the scope of an APP scam as set out above. Having done so, I don't agree that they do. I'll explain why in more detail.

In order to determine if Mr and Mrs H have been the victim of a scam, I have to consider if their intended purpose for the payments was legitimate, whether the intended purposes they and the company they paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company, in this case MSD.

*What was Mr and Mrs H's intended purpose for the funds?*

Mr and Mrs H have provided me with a loan agreement between themselves and MSD, as well as a valuation report for the project. Looking at these, I think it is more likely Mr and Mrs H intended to loan MSD £150,000 for 18 months, with an option for this to be extended by a further six months with an agreed interest rate of 12% per annum. And the intention, as per the loan agreement, was for the funds to be used towards the development costs of the land set out in the agreement.

I therefore think Mr and Mrs H's intended purpose for the payments was legitimate. They planned to take part in an 18-month investment with what appeared to be a reasonable rate of return, in what was presented as a legitimate development project.

*What was MSD's intended purpose for the payments?*

I've reviewed the evidence available to me to reach an outcome on what its more likely MSD's intended purpose for the £150,000 was. I can see that MSD did obtain planning permission for the site in late 2019 from the local council. And they did obtain a valuation report that was carried out by a Chartered Surveyor in August 2020. This gave details of the development site, the planned proposals and the approximate costs and returns that could be gained. I can see this was initially sourced for a separate investment company that also appeared to be interested in investing in the project.

These documents, along with the loan agreement and personal loan guarantee from HB, all suggest that at the time the payments were made, MSD intended to use them to develop the site and then sell it for a profit. I therefore think it is more likely that at the time Mr and Mrs H made the transfers totalling £150,000, their intended purpose for the payment broadly aligned with MSD's purpose for the payments.

Mr and Mrs H's representatives have raised a number of issues that occurred a few years after the investment was made. This includes a court case HB was involved in that was connected to a separate property investment, HB being charged with loan fraud as well as him being disqualified from being a director for 11 years. While I have taken these points on board, I also have to consider that these issues occurred after Mr and Mrs H invested in MSD. And while these points may indicate HB has acted fraudulently in relation to other situations, it does not therefore mean he took Mr and Mrs H's money with no intention to develop the site. As explained above, I think the evidence available from the point at which Mr and Mrs H invested the £150,000 suggests it is more likely MSD did intend to develop the site as expected. Unfortunately, it was unable to and eventually became insolvent before winding up in March 2022.

On balance, having carefully considered everything available to me, I therefore think it was reasonable for Santander to treat this as a civil dispute.

I've also considered if there is any other reason why Santander should reasonably have stepped in and prevented the payments from being made. Account providers are expected to protect their customers from fraud and financial harm, and this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

On balance, I think the transactions of £100,000 and £50,000 were out of character when compared to Mr and Mrs H's genuine account activity. Due to the time that has elapsed, Santander were unable to locate the phone calls in which the payments were set up, so it is not possible to know what level of intervention there may have been. However, as explained above, at the time that Mr and Mrs H made the investment the information available to them suggested it was a legitimate investment with a legitimate company. So, I think it is unlikely any possible intervention would have given them cause for concern and prevented them from making further payments.

It is possible that further evidence may come to light at a later date, which may indicate MSD was operating a scam. Should such evidence come to light, then Mr and Mrs H can complain to Santander again, and refer the matter to this office, should he not be happy with the outcome.

### **My final decision**

I do not uphold Mr and Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to

accept or reject my decision before 12 May 2025.

Rebecca Norris  
**Ombudsman**