DRN-5400712

The complaint

B, a limited company, complains that Santander UK Plc ('Santander') hasn't refunded the money it believes it lost to an authorised push payment ('APP') investment scam.

B's director, whom I'll refer to as 'E', referred the complaint to this service. So, for ease of reading, I'll refer to E throughout my decision.

What happened

The circumstances of the complaint are well-known to both parties. So, I don't intend on setting these out in detail here. However, I'll provide a brief summary of what's happened.

In September 2020, E invested with a business, which I'll refer to as 'K'. She sent £50,000 to a separate business, which I'll refer to as 'N'. At the time of the payment, N was authorised and regulated by the Financial Conduct Authority ('FCA').

E understood that K would use her funds to pay short-term bridging loans to small and medium sized businesses involved in the property development industry. After three years, E was expecting to have received back her investment capital in full, along with interest.

E received interest payments from K, totalling £5,144.18, between October 2020 and September 2021. However, shortly afterwards K became unresponsive and was entered into compulsory liquidation. Believing K was a scam and not a genuine business, she reported the situation to Santander in August 2022. Santander said there was insufficient evidence to demonstrate E had been the victim of an APP scam. It said the situation was a civil dispute involving E, K and N, which meant Santander wasn't responsible for reimbursing E's loss.

As E had sent funds to N (which had been authorised and regulated by the FCA prior to it being dissolved in January 2024), she made a claim for reimbursement to the Financial Services Compensation Scheme ('FSCS'). However, the FSCS refused to reimburse E and recommended she seek reimbursement from Santander instead.

In July 2024, E raised a complaint with Santander about its decision not to reimburse E's loss. Santander issued its response in September 2024. It reiterated its decision that it wasn't responsible for E's loss, because it considered E had paid N – which it considered to be a legitimate supplier – which meant the situation wasn't an APP scam.

Unhappy with Santander's response, E referred her complaint to this service. Our Investigator considered the complaint and upheld it. In summary, they thought E had, most likely, been the victim of an APP scam and, as there were no reasons to refuse reimbursement, they said Santander should refund E's outstanding loss, plus interest from the date Santander declined E's claim.

E accepted our Investigator's opinion, but Santander didn't agree. Santander reiterated that E had paid N, which it said was a genuine business. It also said there was insufficient evidence to conclude that K was operating a scam when E made the payment. Finally, Santander said it was possible that funds could be returned to E once the insolvency proceedings involving K had concluded.

As an agreement couldn't be reached, the complaint has 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.

At the time of E's payment to K, Santander was signed up to the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code, which required firms to reimburse customers who'd been the victims of APP scams in all but a limited number of circumstances.

For the CRM Code to apply to E's circumstances, I need to be reasonably satisfied that it's more likely than not that her payment to K was made for a fraudulent purpose – i.e., E was the victim of an APP scam, and the funds were criminally obtained by K.

I'm very aware that K is in compulsory liquidation and the joint receivers' investigation is ongoing. There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

In order to determine E's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that E was the victim of an APP scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that E first raised her claim with Santander in August 2022, and then again in July 2024, and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving E an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm aware the joint receivers' investigation might result in some recoveries for K's investors – including E. In order to avoid the risk of double recovery, I think Santander would be entitled to take, if it wishes, an assignment of the rights to all future distributions to E under those processes in respect of this investment before paying anything I might award E on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the ongoing joint receivers' investigation for me to fairly reach a decision on whether Santander should reimburse E under the provisions of the CRM Code. I'm persuaded E has, most likely, been the victim of an APP scam. As a result, I think the CRM Code is a relevant consideration in this complaint. I'll explain why.

E understood that K would use her funds to provide short-term bridging loans to companies involved in the property development industry. In May 2023, the Insolvency Service said, in a letter to K's creditors, that there had been *no* evidence discovered that demonstrated K had made any bridging loans. It did say the investigation was ongoing, however, I haven't seen any evidence to contradict this statement in the subsequent two and a half years. So, to my mind, it's reasonable to conclude that K, more likely than not, didn't use investors' funds (including E's) for the purpose in which it received them.

E was provided with a brochure when she made her investment. This said that her investment would be secured by K obtaining a "*first charge*" over the property/properties it would lend her money to develop. I've seen no evidence to suggest K secured charges over properties using E's funds.

K's nature of business, as confirmed on Companies House, is "*Buying and selling of own real estate*" and "*Other letting and operating of own or leased real estate*". These purposes differ significantly from how K purported to be using investors' funds.

Aside from being registered with Companies House, there is a lack of any evidence to suggest K was operating as a genuine company. It received large amounts of investment capital but paid out only small amounts of returns before becoming unresponsive. This behaviour is indicative of a Ponzi scheme and not a genuine business.

The Insolvency Service and the joint receivers have confirmed that the directors of K have failed to co-operate and engage with the ongoing investigations. I accept this, on its own, isn't evidence to demonstrate there was an intention to defraud. However, considering it alongside the other available evidence, which I've referred to above, I find it to be persuasive in concluding that K was, most likely, an APP scam.

I accept that E's payment was sent to N and not directly to K. E didn't hold her own account with N, nor did she have access to the funds, or control over what N did with them, once they'd been sent to N. It was K that had the customer relationship with N and I'm satisfied that once E's funds were sent to N, they were under the control of K and out of E's control. As a result, I'm satisfied that the involvement of N as an intermediary doesn't prevent the principles of the CRM Code applying to E's complaint.

Under the CRM Code, Santander would be entitled to refuse reimbursement if E ignored an effective warning or if E made the payment without a reasonable basis for believing that K was a legitimate supplier.

When E made her £50,000 payment, Santander did provide a written warning about investment scams. The warning was generic and didn't bring to life how investment scams work in practice. So, in E's circumstances the warning wasn't impactful, which an effective warning needs to be as defined by the CRM Code. As a result, I'm not persuaded Santander can fairly refuse reimbursement on the basis that E ignored an effective warning.

I'm aware that Santander also sent a text message to E before processing the payment. I haven't been provided with a copy of what that message said, but I understand that E needed to respond to the message to confirm she'd authorised the payment. So, it's doubtful that the message would've met the CRM Code definition of an effective warning.

Prior to investing, E says she spoke with one of K's sales advisors and the investment was explained to her. She was also provided with a brochure, setting out how the investment worked. She had to complete a professional looking application and received a genuine looking invoice setting out the terms of her investment, including the returns she was promised. So, everything seemingly looked legitimate to E at the time.

E says she conducted research into K and found positive reviews online and found it was advertising in a local newspaper. She searched K's directors online and found no negative information about them. This information helped persuade E that K was a legitimate business and encouraged her to invest.

Overall, I'm satisfied that E had a reasonable basis for believing she was making a payment towards a genuine investment. And I'm not persuaded E ignored an effective warning when making the scam payment. I accept there are other exceptions to reimbursement under the CRM Code, but Santander hasn't raised those, and I don't find the other exceptions would apply in E's circumstances.

I've seen no evidence to suggest E sent the Insolvency Service's letter dated May 2023 to Santander. I find this piece of evidence was key to establishing whether K was most likely a scam or not. So, I don't think Santander reasonably could've reimbursed E until it had been given an opportunity to review the content of that letter.

This service did send a copy of the relevant letter to Santander on 5 February 2025 (albeit on a separate complaint). Once in receipt of that letter, Santander reasonably had sufficient evidence to reimburse E and ought to have done so within 15 calendar days. So, as E has been deprived of a refund, I find that interest can be fairly applied to the reimbursement I'm recommending to E.

Putting things right

To resolve the complaint, Santander should:

- reimburse E's outstanding loss of £44,855.82 (£50,000 less the £5,144.18 returns she received until September 2021); and
- pay interest, at 8% simple per annum, from 20 February 2025 (15 calendar days after Santander received the Insolvency Service's letter dated May 2023) until the date of settlement.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 22 December 2025.

Liam Davies
Ombudsman