

The complaint

Mr B and Mr B are unhappy that Santander UK Plc has decided not to refund them after they paid money to an investment scam.

What happened

Mr B invested in a rent-to-rent property scheme using funds from his joint account held with a relative – Mr B. Mr B was introduced to R who produced all contracts, and payments were made direct to R. R ultimately passed on some of these funds to A, who have now turned out to be scammers.

A professional representative (P) raised a scam for Mr B with Santander. In its final response it said A was subject to a law enforcement agency investigation and there was no current update. It invited Mr B to go back to Santander on the completion of the criminal investigation. Santander later issued an update. It said the matter was the subject of a private civil dispute and it would not be refunding Mr B.

One of our investigators looked into things she said Mr B paid R, not A. Mr B did not have any contractual agreement with A and did not pay A. All payments and interactions were made with R, which is a legitimate company. R did what it said would with consumers funds. R held itself out as a business that was investing into a rent-to-rent investment scheme and that's what it did. R invested with A. It legitimately took investors' money and invested with A.

P believed the CRM is applicable and doesn't exclude payments made by an intermediary. But the investigator concluded R wasn't acting as an intermediary it was instead the party that Mr B invested with – even if their money ended up elsewhere. It was R that entered into a joint venture agreement with Mr B. The fact that R wasn't able to meet those obligations, because of who it in turn invested with, doesn't mean R wasn't acting legitimately when obtaining Mr B's money.

Mr B also responded to say the money was sent to R on the belief that R was sourcing the houses, refurbishing them and securing the social housing contracts, at no point did R ever verbally or in writing tell Mr B it was acting as an intermediary. And he feels like R have facilitated this scam. By going through an intermediary Mr B has lost out on a refund from Santander, despite ultimately losing funds to a scam. Mr B has also explained his personal circumstances at the time and that it was a difficult time for him. And he's described the impact this scam has had on him financially and on his own well-being. He feels the large value payments leaving the account in quick succession ought to have been picked up on by Santander.

The investigator was satisfied this complaint was not covered by the CRM Code and did not think Santander ought to be held liable to refund Mr B for any other reason.

At this point P stopped representing Mr B with this complaint.

As Mr B did not accept this outcome the complaint has been passed to me to consider.

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'm sorry to disappoint Mr B, but I'm not upholding this complaint. I'll explain why. I don't doubt that Mr B has lost money here. It's clear Mr B made an investment in good faith, and Mr B hasn't seen the full returns promised. Mr B put a substantial sum into this supposed investment, and I appreciate the impact this has had on him and his family as well as his business.

But there aren't grounds here upon which I can hold Santander responsible for Mr B's loss. The starting point at law is Mr B is responsible for payments made from its account which are properly authorised. This is set out in the Payment Service Regulations (2017) and confirmed in M's account terms and conditions. There's no dispute here as to whether Mr B authorised the payments.

P, in previously representing the complaint, referred to the CRM Code as a means for seeing Mr B reimbursed. But I'm not persuaded it applies to the payments made by Mr B. That's because they don't meet the definition of an APP scam.

A was operating a scam. But Mr B didn't have a relationship or any direct dealings with A. Mr B dealt solely with R. It was R's that Mr B was introduced to. It was R that talked Mr through the investment opportunity, and how to proceed. It was also with R whom Mr B signed agreements for the purposes of the investment, and it was R that Mr B sent money to and received returns from.

P hasn't said there is any doubt about R's legitimacy, instead accepting that R was itself a victim of the scam run by A. And I haven't seen anything to suggest R wasn't operating legitimately or was involved in the scam that A carried out.

The CRM Code states that it applies to payments where, *"the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent"*. There's no doubt Mr B believed the other person – R – was legitimate. But the purpose of making that payment to R was legitimate too, and not fraudulent.

Mr B had a genuine relationship with R. R had made no attempts to deceive Mr B into parting with its money. Mr B paid R directly, with the contractually reinforced understanding that it would be R that paid returns, as indeed it did for several months.

R was set up as a business in its own right. It had its own accounts, was a properly registered company, and entered into contracts with clients. R was making (or intended to make) money from clients it introduced to A's investment scheme. Mr B was one of R's clients.

A is not mentioned in the contracts Mr B signed. Although there is reference to a management company. Instead, Mr B's contract is only with R. There is no mention of A. I know P disagreed with the position I've explained here. P instead believed it is the ultimate destination of the funds (that being A) that ought to be the determining factor in establishing payment purpose and whether a payment has been made as a result of a scam. My findings explain why that isn't the case. In addition, the Financial Ombudsman Service has discussed this precise scenario with the LSB, and it agreed that the CRM Code would not apply to payments made in this way, where a legitimate business with whom all agreements/contracts were entered into, providing what it itself believed to be a legitimate service, is involved.

Looking beyond the CRM Code, at a firm's responsibilities to protect customers from financial harm through fraud, I can still not find reason to say Santander ought to bear

responsibility for Mr B's loss. The reasoning here is broadly the same as above, given the payments wouldn't be defined as being made as part of an APP scam. But, beyond that, if Santander had perhaps intervened in the payments and questioned Mr B, I'm not persuaded it could have uncovered that an APP scam was taking place. In making that finding I've considered the level of sophistication of the scam, and how persuasive it was.

As for attempts to recover funds, such attempts could only ever be made if a scam were established. And the attempts would only go as far as the account that received them, that being the one held by R. It's evident that, as a legitimate entity, it transferred the money on as intended, which meant there was nothing left to recover.

My final decision

I don't uphold this complaint.

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

Sophia Smith
Ombudsman