

## The complaint

Mrs M complains that Santander UK Plc won't refund her after she sent funds to an investment that she now considers to have been a scam.

Mrs R is professionally represented in bringing her complaint, but for ease of reading I'll refer to all submissions as being made by Mrs M directly.

## What happened

The circumstances of the complaint have been set out in detail already by our investigator, so I won't repeat them here. But briefly, both parties accept that Mrs M had previously invested in a firm I'll refer to as B in 2014, in the motor industry. Mrs M's understanding was that with her funds, B would arrange the purchase of a car for leasing agreements, with part of the leasing charges being provided to Mrs M, and at the end of the leasing term, Mrs M would receive the remainder of her capital and interest back.

However, in March 2020, Mrs M entered into a new investment with B on the same premise as that previously, which wasn't repaid in full as agreed. Mrs M made a payment to B for £14,000 via online banking and over the months that followed, she received £2,673.60 in returns, after which further repayments stopped. When making the payment, Santander has said Mrs M would've been provided with the following warning, based on her selecting 'investment' as the payment purpose:

### ***'Could this be an investment scam?'***

*If you've been cold-called or contacted out of the blue about an investment opportunity, this is highly likely to be a scam.*

*Please check the company details thoroughly, including on the Financial Conduct Authorities website ([fca.org.uk](http://fca.org.uk)), before transferring any money.*

***If you're at all nervous, cancel this payment and call us immediately.'***

Around ten months after making her payment, Mrs M received contact from B, advising the accounts of its parent company were being restricted by the Financial Conduct Authority (FCA) and B was subsequently closed. Believing she had fallen victim to a scam, Mrs M contacted Santander to raise a claim and referred her complaint to our service.

Santander considered Mrs M's complaint but didn't think it was in a position to provide a response, as there was an ongoing investigation into B.

An investigator at our service subsequently considered the complaint and upheld it. She said the Serious Fraud Office (SFO) had since completed its investigations into B and charged it. She also noted the Lending Standards Board's (LSB) comments that the CRM Code does *'not require a criminal test to have been met before a reimbursement decision can be reached.'* She therefore didn't consider that it was any longer appropriate to delay providing a response to Mrs M on her complaint.

The investigator was satisfied, based on all available evidence, that B was conducting a scam when Mrs M made the payment in dispute, and that she had a reasonable basis at the time for believing the payment was being made towards a legitimate investment. She therefore thought Mrs M should be reimbursed for the payment referenced above (with a deduction for credits received).

Santander disagreed with the investigator's opinion. The complaint has therefore been referred 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.

In broad terms, the starting position in law is that Santander is 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 (PSR's).

#### *Is Mrs M entitled to a refund under the CRM Code?*

Santander is 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 does not apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods, services or digital content but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

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 Mrs M made her payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mrs M thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments and whether this was broadly in line with what Mrs M 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.

Mrs M was making payments to B as part of an investment. Based on the evidence that Mrs M had available at the time, there isn't anything to suggest she didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose B had in mind and whether it was in line with what Mrs M thought.

In reaching an answer on what purpose B had in mind, I've considered the wider circumstances surrounding B, and the linked companies involved in the investment. The key information is:

- Following their investigation, the Serious Fraud Office (SFO) said the defendants had provided false information to investors, “encouraging people to pay in whilst knowing that investments are not in reality backed up by the cars they had been promised”.
- One of the linked companies (R) told the Financial Conduct Authority (FCA) that it owned 1,200 cars, but the number of charges registered at Companies House was 69. The cars purchased were supposed to be new cars, but DVLA checks showed that 55 cars appeared to be second-hand. The business model relied to a large extent on securing deep discounts on new vehicles and such discounts would not be available on second-hand cars. There were other discrepancies found between what R told the FCA and what the DVLA checks showed.
- Administrators of one of the linked companies found that it entered into 3,600 investment agreements with individuals, which should’ve had specific secured vehicles. But the company only had title to approximately 600 vehicles.
- There is no evidence that cars were purchased with Mrs M’s funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I’m satisfied that Mrs M’s funds weren’t used for the intended purpose and that B obtained the funds through dishonest deception. So, I’m satisfied that Mrs M’s payment meets the definition of an APP scam and is covered by the CRM Code.

The CRM Code says that Mrs M is entitled to a full refund unless Santander can establish that an exception to reimbursement applies. I’ve therefore considered whether there are any exceptions under the CRM Code that would mean that Mrs M isn’t entitled to a full refund.

*Does an exception to reimbursement apply?*

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that\*:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

\* There are further exceptions outlined in the CRM Code, but they don’t apply to this case.

I’ve first considered the warning Santander provided to Mrs M when making the payment, but I don’t think it can be considered effective under the CRM Code. It doesn’t go into enough detail about investment scams, or provide the consequences of proceeding with the payment. It doesn’t set out some of the typical warning signs of an investment scam, other than cold calling, neither is it specific about what in particular customers should be checking on the FCA website. I therefore don’t think this exclusion can be relied upon by Santander as a reason to not reimburse Mrs M.

I’m also satisfied that Mrs M had a reasonable basis for believing the investment was legitimate. I say this because Mrs M has provided evidence that she had successfully invested with B before, and that this investment had completed in 2017 as expected without issue. Mrs M also noted that B was registered and active on Companies House when she made her payment and had positive online reviews, as well as providing professional marketing material.

As I'm not satisfied that Santander can rely on an exception to reimbursement, Mrs M is entitled to a full refund of £14,000, minus returns she received on her investments of £2,673.60.

Santander has questioned credits received by Mrs M and her full financial position as a result of the scam, particularly as Mrs M's credits weren't received into her Santander account. However, Santander has since been provided with Mrs M's statements that demonstrate the returns she received. The value of these returns match the value quoted in Mrs M's agreement with B and the end of these returns tie in with the beginning of the FCA's involvement, so I'm satisfied the returns quoted are accurate in calculating any refund due to Mrs M.

### The interest award

Prior to the SFO completing their investigation, Mrs M's payment wouldn't have been covered by the CRM Code.

However, on the conclusion of the SFO's investigation on 19 January 2024, Santander should've considered the available evidence and given Mrs M an answer under the CRM Code within 15 business days - as per R3 (1) (c) of the CRM Code.

This means interest should be calculated from 15 business days after 19 January 2024 (when the SFO investigation concluded) until the date of settlement. Interest is awarded at 8% simple per year.

It's possible that funds could be recovered at a later date through the administrators and Santander are entitled to ask Mrs M to sign an indemnity to cover this eventuality.

### Claims made to the FSCS

The Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. More information about FSCS's position on claims submitted to FSCS against Raedex can be found here:

<https://www.fscs.org.uk/making-a-claim/failed-firms/raedex/>

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Mrs M is now complaining to us about in connection with the activities of Santander.

As I have determined that this complaint should be upheld, Mrs M should know that as they will be recovering compensation from Santander, they cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount they recover from Santander they may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mrs M has already made a claim at FSCS in connection with B, and in the event the FSCS pays compensation, Mrs M is required to repay any further compensation they receive from their complaint against Santander, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS shares information with other

public bodies can be found in our privacy notice here: (<https://www.financial-ombudsman.org.uk/privacy-policy/consumer-privacy-notice>)”

### **My final decision**

My final decision is that I uphold Mrs M's complaint and require Santander UK Plc to:

- Refund Mrs M £11,326.40 (her investment minus associated returns)
- Pay 8% simple interest per year on the refund, calculated from 15 business days after 19 January 2024 until the date of settlement.
- In order to avoid the risk of double recovery Santander is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 3 December 2025.

Kirsty Upton  
**Ombudsman**