

Complaint

Miss B is unhappy that Santander UK Plc didn't reimburse her after she reported falling victim to a scam.

Background

In 2019, Miss B was introduced to an investment opportunity with a company I'll refer to as Company S. The source of that introduction was Mr K. I understand he was an independent financial advisor who had advised Miss B on multiple occasions in the past going back decades. He told her this particular investment would be in a three-year bond issued by a company that invested in residential property. She was told the annual yield on the bond was 8.5%

He wasn't her only source of information about the investment. She received direct communications from Company S, including a glossy brochure and emails providing more details about the activities of the firm. After considering her options, she was persuaded to invest, which she did with two payments of £10,000 and £15,000 respectively. This was in July 2019. She did receive credits back into her account that were the apparent returns on her investment. This happened for 15 months before they stopped abruptly. She made queries with Mr K and Company S to find out why payments had stopped, but didn't receive an explanation. Company S has since entered liquidation. Miss B concluded that she must have fallen victim to a scam.

She notified Santander, but it didn't agree to refund her. It didn't think Miss B was the victim of a scam. In its view, this was a private civil dispute, and she should look to recover her losses directly from the company via the formal insolvency process. Miss B wasn't happy with that and so she referred her complaint to this service. It was looked at by an Investigator who upheld it in full. Santander disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Under the relevant regulations, the starting position is that customers are responsible for payments they have authorised. Since Miss B authorised the payments in question, she is presumed liable for them. However, this is not the end of the matter. Banks are also expected to monitor account activity for signs of potential fraud. If a bank identifies indicators of risk, such as a payment being unusual or out of character, it should respond to that risk in a proportionate way. In addition to that, Santander was a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Signatories to the CRM Code were generally required to reimburse customers who fell victim to authorised push payment (APP) scams, except if a limited range of exceptions applied.

However, the CRM Code doesn't apply in all cases. In order for Miss B to benefit from its provisions, what happened here has to meet the relevant parts of its definition of an APP

scam. In other words, these payments must have been ones where Miss B “*transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent.*”

The CRM Code is also explicit that it doesn't apply to private civil disputes. It says:

“This 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 first matter, therefore, that I have to decide is whether the provisions of the Code apply at all in view of the above. To find that this was fraud, I'd expect (a) there to be a misalignment between the purpose for which Miss B made the payment and the purpose for which it was procured by Company S; and (b) that difference to have been due to dishonest deception on the part of Company S. The key consideration here is what the intentions were of the directors of Company S. I obviously can't know what they were for sure, so I have to look at what the other available evidence shows and use that to infer what their intentions likely were.

I've considered the available evidence carefully and, having done so, I'm satisfied that the evidence here is strong enough to support a finding that Miss B fell victim to an APP scam. I say that for the following reasons:

- I understand the principal director of Company S has been disqualified from serving as a director of a limited company for eight years by the Secretary of State for Business and Trade and that both the company and the director are now the subject of a substantive police investigation.
- This service has seen evidence that Company S claimed to have a formal agreement in place to lease local authority properties, but this has since been discovered to have been a false claim.
- Company S is in liquidation and, as I understand it, the Insolvency Service has confirmed that its directors have refused to co-operate with its activities.
- This director appears to have claimed that Company S had assets of £34 million, but it never filed any accounts with Companies House, and its accounts have never been independently audited.

Fundamentally, it appears that no evidence has been uncovered to show that investor money was ever used by Company S for the intended purposes of its investors. I'm satisfied that essential difference in the purpose for which Miss B made her payment and the purpose for which Company S procured it came about as a result of dishonest deception on the part of the directors of Company S.

As a result of the above, I'm satisfied these payments were covered by the CRM Code. The CRM Code requires firms to reimburse customers in all but a limited number of circumstances. It is for the firm to establish that one of the exceptions to reimbursement applies. Broadly summarised, the CRM Code allows a firm to not reimburse its customer if it can show that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that the person or business with whom they transacted was legitimate.

According to Santander's records, no warning was provided in connection with the first payment. When Miss B attempted the second, however, it says she would've seen a warning using the following text:

Could this be an investment scam?

Anyone cold-calling with investment opportunities are likely to be criminal. If you're suspicious, please stop now.

If someone is pressuring you, please stop now.

Unfortunately, I don't think this was an effective warning, as defined in the CRM Code. I don't think its content was sufficiently specific and so I can understand why the contents of the warning didn't resonate with Miss B. The investment opportunity hadn't come about as the result of a cold-call and she wasn't being pressured into making the payment. I can understand why she didn't think the warning applied to her.

I've also considered whether she had a reasonable basis for believing that she was making a genuine investment and I'm satisfied that she did. It's significant that the person who introduced her to the investment opportunity was someone she had known for a considerable period of time and someone who had advised her well on financial matters in the past. I don't think it was unreasonable for her to attach significance to the source of the recommendation.

She also received several direct communications from Company S itself which would've, at least, persuaded her that she was dealing with a genuine firm. It had an intelligible investment strategy. Miss B knew what it was claiming it would do with her money and how it would generate a regular income for investors. Santander has argued that Miss B didn't carry out enough checks before going ahead with the investment. I'm not convinced by that, but in any event, it isn't clear what any checks would've revealed. At the time she made her investment, Company S appeared to be a legitimate company and so it's hard to see how any checks she carried out could've revealed that it was a scam.

I realise that means that, even if Santander had done more here in connection with either payment, it too wouldn't have been able to uncover that she was being targeted by a scam. To any employee of the bank, it would've looked like a genuine, albeit unregulated, investment. However, the CRM Code doesn't make the requirement for Santander to pay a refund conditional for it having been at fault. Overall, I'm satisfied Miss B made this payment with a reasonable basis for believing it to be connected to a legitimate investment and it follows that Santander should now reimburse her under the terms of the CRM Code.

Final decision

For the reasons I've set out above, I uphold this complaint. If Miss B accepts my final decision, Santander UK Plc needs to refund the payments she made in connection with the scam, less any returns that were paid.

It also needs to add 8% simple interest per annum to that amount calculated to run from the date it declined her claim under the CRM until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 6 January 2026.

James Kimmitt

Ombudsman