DRN-5637788

The complaint

B complains Santander UK Plc won't reimburse money it says it lost to an investment scam.

What happened

In January 2021, B invested £28,000 in a company – Buy2Let/Raedex Consortium Ltd ("R") – which leased cars.

R positioned this opportunity so that investors understood their money would fund a new lease car for a UK driver for three years. B understood it would be repaid its capital in monthly instalments over the term with a final payment plus the interest being paid at the end of this.

R went into liquidation early 2021, shortly after B had invested. B says it didn't receive any returns on its investment.

In 2023, B complained to Santander that it'd been scammed by R and asked to be reimbursed under the Lending Standards Board (LSB)'s Contingent Reimbursement Model (CRM) Code (or "the Code"). Santander declined its claim for a refund and said the payments weren't covered by the Code as this was a civil dispute.

One of our investigators looked into B's complaint and recommended it be upheld. B accepted the outcome, but Santander didn't. It said that it wasn't suitable for our Service to deal with this case due to the ongoing court action to determine if this was fraud and due to the risk of B being overcompensated. As an agreement couldn't be reached informally, the case 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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the provider to reimburse the customer even though they authorised the payment.

The CRM Code is of particular relevance to this case. It's a voluntary code which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this in all but a limited number of circumstances. Santander was a signatory to the Code at the time the payments in dispute were made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An "APP scam" is defined by DS1(2)(a) as:

> *"Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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."*

If I conclude that the payment here meets the required definition of a scam then B would be entitled to a reimbursement, unless Santander has shown that any of the exceptions as set out in R2(1) of the Code apply.

Is it appropriate to determine B's complaint now?

While Santander initially said this was a civil matter, it then responded to the Investigator's view and acknowledged that there were indications this could be a fraudulent opportunity. But it maintained that it wasn't suitable for our Service to deal with this case now, due to the pending court action and concerns around fair redress. It asked us to pause in making any further decisions on R.

The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision. By asking for us to pause any decisions, it's possible Santander considers that R3(1)(c) applies in this case.

In deciding whether R3(1)(c) is applicable in this case, there are a number of key factors I need to carefully consider:

- Where a firm already issued a reimbursement decision - for example by telling the consumer they will not be reimbursed because they are not the victim of an APP scam – then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that *"a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code".*
- The Financial Ombudsman Service does not have the power to restart R3(1)(c) – so where a firm has made a reimbursement decision a consumer is entitled, under the DISP rules, for our service to decide the merits of the complaint about the payment(s) they made fairly and reasonably on the balance of probabilities.

So, this provision only applies before the firm has made its decision under the CRM Code, meaning Santander can't seek to delay a decision it's already made. It had already reached a decision on B's claim in its final response letter and also reiterated this in its submissions

to this service, as above. So, I don't think Santander can now rely on this provision or that this prevents us from considering this complaint now.

The Serious Fraud Office (SFO) had been carrying out an investigation into the car leasing company and several connected companies. That investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of R's former company directors with fraud, on its website. The court case is currently scheduled for 2026.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence that is already available. And I'm conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

The LSB has said that the CRM Code doesn't require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So, in order to determine B's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it's more likely than not that it was the victim of a scam rather than this being a failed or a bad investment.

I'm required to determine complaints quickly and with minimum formality. In view of this, I don't think it would be appropriate to wait to decide B's complaint unless there's a reasonable basis to suggest that the outcome of the related court case may have a material impact on my decision over and above the evidence that is already available.

It does however seem that Santander is concerned that any subsequent court action regarding R's actions may lead to B being compensated twice for the same loss, i.e., by Santander and by the courts. But I don't know how likely it is that any funds will be recovered as part of those proceedings.

Similarly, I'm aware that there is an ongoing administration process – including liquidation that it's referenced. This might result in some recoveries; but given this would initially be for secured creditors, I think it's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive. That said, 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.

I'm also aware that the Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against R. More information about the FSCS's position on claims submitted to FSCS against R 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 payment service providers related to the R's investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for the FSCS to determine, and under its rules. It might be that R has conducted activities that have contributed to the same loss B is now complaining to us about in connection with the activities of Santander.

As I've determined that this complaint should be upheld, B should know that as it will be recovering compensation from Santander, it can't claim again for the same loss by making a

claim at the FSCS (however, if the overall loss is greater than the amount it recovers from Santander, it may be able to recover that further compensation by making a claim to the FSCS, but that will be a matter for the FSCS to consider and under its rules). Further, if B has already made a claim at the FSCS in connection with this matter, and in the event the FSCS pays compensation, it's required to repay any further compensation it receives from its complaint against Santander, up to the amount received in compensation from FSCS.

The Financial Ombudsman Service (FOS) and FSCS operate independently, however in these circumstances, it's 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

While the FSCS may be taking on these cases against R as a failed unregulated investment, it doesn't automatically follow that this was *not* a scam. This is not something that the FSCS would make a finding on before considering those claims.

As Santander can ask B to undertake to transfer to it any rights it may have to recovery elsewhere, I'm not persuaded that these are reasonable barriers to it reimbursing it in line with the CRM Code's provisions.

So as the SFO has reached an outcome on its investigation, and I don't think it's fair or necessary to wait until the outcome of the related court case (which isn't scheduled for over 12 months' time). Nor do I consider it's necessary to wait for the administration process to complete or wait for a claim with FSCS to be made. I therefore don't think it's fair for Santander, or our Service, to delay making a decision on whether to reimburse B any further.

Has B been the victim of a scam, as defined in the CRM Code?

As referenced above, Santander has signed up to the voluntary CRM Code which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

The Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it wouldn't apply to a genuine investment that subsequently failed. And the CRM Code only applies if the definition of an APP scam is met, as set out above.

I don't consider the first part of the definition quoted above (DS1(2)(a)(i)) is met in this case. This isn't in dispute. At this stage it seems Santander may be accepting this was a scam, but it hasn't confirmed this. For completeness, I will set out why I consider DS1(2)(a)(ii) is met, so I am concluding that B's intended purpose for the payments was legitimate, the intended purposes it and R had were not broadly aligned and, that this was the result of dishonest deception on the part of R.

From what I've seen and what B has told us, I'm satisfied that it made the payments with the intention of investing with the car leasing company. It thought its funds would be used to purchase a vehicle which would then be leased out, and that returns would be received on this investment. I haven't seen anything to suggest that B didn't think this was legitimate.

I've considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so whether this was a scam or

genuine investment.

The evidence I've seen suggests the car leasing company didn't intend to act in line with the purpose for the payments it had agreed with B. It was told its capital would be used to fund a specific vehicle and that it would be secured in its favour until the loan was repaid, by way of a fixed charge.

The FCA checked a sample of the vehicles the companies held against the DVLA database and found a significantly larger proportion of these were second-hand than R's business model suggested or would support – as it relied on securing significant discounts on new vehicles, which wouldn't be available on second-hand vehicles. It also found a number of leases started significantly before the vehicles were put on the road, and some vehicles were not found on the database at all. And the FCA said it considered the companies' valuation of the vehicles held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of one of the connected companies also said that the total number of loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 – or less than one car for every six loan agreements.

Having checked online, I've not seen a record at Companies House of a charge in B's favour over any vehicles. And, as I think the overall evidence shows the company was largely not carrying out this key aspect of the investments, I think it's safe to conclude that this wasn't done in B's case either.

So, I think the evidence shows the car leasing company wasn't acting in line with the business model and features of the investment it had led B to believe it was making. And so, the purpose the company intended for the payments B made wasn't aligned with the purpose it intended for the payments.

The SFO has also said that the former company directors are accused of providing those who invested with false information and encouraging people to pay in while knowing that investments weren't, in reality, backed up by the cars they had been promised. So, I think the discrepancy in the alignment of the payment purposes between B and R was the result of dishonest deception on the part of the company.

As a result, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

Is B entitled to a refund under the CRM code?

Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like B. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an Effective Warning. A second circumstance in which a bank might decline to reimburse, is if it can be demonstrated that the customer made the payments without having a reasonable basis for belief in a specific set of things.

Santander hasn't argued that it provided an Effective Warning to B under the Code when it made either of the payments, which B then ignored. And I also haven't seen that Santander has argued that B didn't have a reasonable basis for belief, so that it could apply this

exception to reimbursement.

I can't see that any other exceptions to reimbursement listed in the Code could apply in this case. And I don't think Santander has established that any of the applicable exceptions to reimbursement under the Code do apply here. I'm satisfied that B had a reasonable basis for belief in this payment being for a legitimate opportunity – it was paying an account that belonged to R and the paperwork it held suggested this was a legitimate investment. So I'm satisfied Santander should refund the money B lost in full.

Putting things right

I haven't seen anything that indicates B has received any returns on its investment or that it's been able to recover any of the funds invested through other means. Considering what we know of R's practices and the timing of B's investment, I wouldn't have expected B to have received any returns.

But, I don't think any intervention action I reasonably would've expected Santander to take would've prevented B from making the disputed payments at the time they were made. This is because I don't think any of the information that I would've reasonably expected Santander to have uncovered at the time of the payments would've uncovered the scam or caused it significant concern. Also, I don't think it would've been unreasonable for Santander to initially decline B's claim under the Code, as when it first contacted it, it wasn't clear from the evidence available at that time that this was most likely a scam.

But the CRM Code allows firms 15 days to make a decision after the outcome of an investigation is known. So, considering this provision, I think it should have responded to B's claim and reimbursed its losses under the CRM Code within 15 days of the SFO publishing the outcome of its investigation in January 2024. So I think Santander should now pay 8% simple interest per year on the refund from 15 days after the SFO published its outcome on 19 January 2024 until the date of settlement.

Therefore, in order to put things right for B, Santander UK Plc:

- Refund B the payments it made as a result of this scam in January 2021 (£28,000)
- Pay B 8% simple interest per year on that refund, from 15 days after 19 January 2024 until the date of settlement

As the car leasing company is now under the control of administrators, it's possible B may recover some further funds in the future. 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.

My final decision

My final decision is that I uphold this complaint and I require Santander UK Plc to put things right for B as set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 7 August 2025.

Amy Osborne
Ombudsman