

## The complaint

Mr R complains that Santander UK Plc won't refund him after he sent funds to what he considers to be an investment scam.

Mr R is professionally represented in bringing his complaint, but for ease of reading I'll refer to all submissions as being made by Mr R 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 Mr R had been investing successfully for some years in a firm I'll refer to as B, in the motor industry. Mr R's understanding was that with his funds, B would arrange the purchase of cars for leasing agreements, with part of the leasing charges being provided to Mr R, and at the end of the leasing term, Mr R would receive the remainder of his capital and interest back.

However, from 2018 onwards, Mr R made payments towards new investments with B that weren't repaid in full as agreed. Mr R has accepted the investigator's view that for payments made before the inception of the Contingent Reimbursement Model (CRM) Code, it's unlikely Santander could have identified and therefore prevented these payments from being made, following any intervention. I've therefore focused on payments made after the inception of the CRM Code, which are as follows:

Date	Value
27/08/2020	£14,000
09/09/2020	£14,000
19/02/2021	£14,000

On these three specific investments, Mr R received returns totalling £2,406.24.

Shortly after making the final investment payment, Mr R was advised that B was being investigated by the Financial Conduct Authority (FCA) and B was subsequently closed. Believing he had fallen victim to a scam, Mr R contacted Santander to raise a claim. Santander didn't consider it was in a position to provide a response to Mr R's claim, due to ongoing investigations. Mr R remained unhappy and referred his complaint to our service.

An investigator considered the complaint and upheld it. She said the Serious Fraud Office (SFO) has 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 Mr R on his complaint.

The investigator was satisfied, based on all available evidence, that B was conducting a scam when Mr R made the above payments, and that he had a reasonable basis at the time

for believing the payments were being made towards a legitimate investment. She therefore thought Mr R should be reimbursed for the three payments he made listed 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 Mr R 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 Mr R made his payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr R 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 Mr R 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.

Mr R was making payments to B as part of an investment. Based on the evidence that Mr R had available at the time, there isn't anything to suggest he 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 Mr R 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 Mr R's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that Mr R's funds weren't used for the intended purpose and that B obtained the funds through dishonest deception. So, I'm satisfied that Mr R's payments meet the definition of an APP scam and are covered by the CRM Code.

The CRM Code says that Mr R 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 Mr R 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.

Santander hasn't provided any evidence that suggests an effective warning was shown to Mr R at the time he made the payments, so it can't rely on that exception to reimbursement.

I'm also satisfied that Mr R had a reasonable basis for believing the investment was legitimate. I say this because Mr R has provided evidence that he had successfully invested with B for a number of years previously without issue, which I think would have allayed any concerns he may have had. When making the third payment listed above, he says B was assuring him that it was in a very strong position, and I don't think Mr R had reason to doubt this, particularly given that he was still receiving regular returns on the two previous investments (and earlier ones) as agreed. B was also registered and active on Companies House and had positive online reviews. So I don't think Santander can rely on basis for belief as an exception to reimbursement either.

As I'm not satisfied that Santander can rely on an exception to reimbursement, Mr R is entitled to a full refund of £42,000, minus returns he received on these investments of £2,406.24.

Santander has questioned additional credits received by Mr R relating to investments with B and whether looking solely at payments made since the CRM Code's inception results in Mr R's position from the scam being fully understood. Other credits relate to previous investments Mr R made with B (both monthly returns and the lump sum on maturity of those investments), which don't form part of this complaint. Additionally, I think it's important to remember that the impact of this is two-fold – while Mr R has made a profit on some earlier investments, he's also made losses on others that aren't covered by the CRM Code.

I'm satisfied that the correct returns have been used to calculate the refund above. I say this based on the expected return for each investment and the credits paid to Mr R's Santander account (which align with loan agreement numbers stated). Also, I haven't seen any evidence that suggests Mr R received returns to any account/s he held outside of Santander. Given that Mr R received the expected returns consistently to his Santander account until the beginning of the FCA's investigation, I find it unlikely that any other accounts were involved.

### The interest award

Prior to the SFO completing their investigation, Mr R's payments 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 Mr R 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 Mr R 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 Mr R is now complaining to us about in connection with the activities of Santander.

As I have determined that this complaint should be upheld, Mr R 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 Mr R has already made a claim at FSCS in connection with B, and in the event the FSCS pays compensation, Mr R 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 Mr R’s complaint and require Santander UK Plc to:

- Refund Mr R £39,593.76 (his investment payments 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 Mr R to accept or reject my decision before 2 December 2025.

Kirsty Upton  
**Ombudsman**