DRN-5767125

The complaint

Ms B complains that Santander UK Plc hasn't refunded her payments she made to an art investment she now says was a scam.

What happened

Ms B first invested in art with a company I'll call 'S' in October 2019. She continued to invest until late 2022. However, in mid-2023, S went into liquidation and Ms B then said she'd been the victim of a scam. She raised a complaint to Santander about the payments she'd made.

Santander didn't agree and said this was a civil matter between her and S. Ms B invested via both debit card and transfers, so in its investigation S considered whether a reimbursement model was applicable to her two transfers, but it concluded this didn't apply. And it said it was unable to recover her funds.

Ms B came to our Service, but we also concluded that this was a civil matter. Ms B, via her representative disagreed and provided extensive further submissions, including quoting and disagreeing with a previous decision I issued on this same investment. She asked for an Ombudsman to review her case, so it's now 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.

Interventions and recovery

Having taken into account longstanding regulatory expectations and requirements, and what I consider to be good industry practice, I agree Santander ought to have been on the look-out for the possibility of fraud and, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks before processing a payment.

Ms B has reported making 14 card payments and two transfers to S between October 2019 and September 2022. Given the value of Ms B's payments on 8 November 2019, I accept Santander ought to have spoken to Ms B and asked her some questions to understand what she was doing. And then provided a relevant scam warning to her related to this. Prior to this payment, I'm not persuaded the payment values were high enough to warrant an intervention.

Santander hasn't been able to evidence any interventions or warnings prior to the 2022 transfers. However, I don't consider that proportionate conversations at *any* time would've changed Ms B's decision to invest. I'll explain why.

I'm not persuaded the kind of information I'd expect Santander to have shared/discussed with Ms B would've prevented the payments from being made. S was a legitimately registered company at the time Ms B purchased art from them. We know her daughter

helped her research the company before she invested and there wasn't anything in the public domain at the time to suggest Ms B or Santander should've been concerned about her falling victim to a scam. The vast majority of the points Ms B has now raised didn't come to light until much later and Santander wouldn't have been aware what would happen with regards S and its finances.

Ms B has provided us with some of the promotional literature S provided to her. The brochure contains persuasive and comprehensive information for investors which sets out core details about the investment. She was also invited to view the art in person and invited out to dinner by S. It seems highly unlikely that a conversation with Santander would've prevented Ms B going ahead with the purchases when she held this information, had done research and had been treated in a professional manner. And I don't think a proportionate warning would've given her any concerns about this investment opportunity.

I haven't seen information that indicates Santander ought to have refused to make the payments now disputed at the time Ms B was making them, or that anything it could have shared would've prevented her from going ahead. And Santander wasn't required to provide her with investment advice as part of processing these payments, for example, to go through S's finances or research who was involved in the firm for any concerns. It would only be required to direct Ms B to do her own due diligence, such as online research, and to check she was satisfied with the opportunity, which she'd done, and she was, at the time of the payments.

In relation to recovery of funds, for the 14 debit card payments, the option here would've been to make a chargeback claim. But first, Ms B doesn't appear to have paid S directly – so this would've likely impacted any claim for these transactions. But, more importantly, she didn't report she'd been scammed until considerably over 120 days after her last card payment to S. The rules on chargeback claims are strict about the time limits that apply, and Ms B was too late to make a claim for any of her payments to S. So I'm satisfied there was no prospect of recovery for these.

And as Ms B made the transfers in 2022 but didn't complain until 2023, and after S had gotten into financial difficulty, I'm also not persuaded there was any prospect of recovering these funds either.

The Contingent Reimbursement Model

Santander is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code or "the Code"). This requires firms to reimburse customers of Authorised Push Payment (APP) scams in all but a limited number of circumstances. The Code goes on to define what it means by an APP scam. So if I am not persuaded that there was a scam, in line with the definition, then I will not have a basis under the Code to uphold this complaint. This Code only applies to the two transfers Ms B made in 2022.

The relevant definition of a scam for this case, in accordance with the CRM Code, is that the customer – Ms B – transferred funds to another person for what she believed were legitimate purposes but were in fact fraudulent.

The Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it doesn't cover a genuine investment or a genuine business that subsequently failed. Or a situation involving something that may be considered a "bad bargain".

Therefore, in order to determine whether Ms B has been the victim of a scam as defined by

the Code, I need to consider first, whether the purpose she intended for the payment was legitimate. I then need to consider whether the purposes she intended and S intended were broadly aligned. And if I find they weren't, whether this was the result of dishonest deception on the part of S.

Ms B bought art between 2019 and 2022. And she did so with the intention of owning this art as an investment portfolio. I haven't seen anything to suggest that Ms B didn't think this was a legitimate art investment.

After S went into liquidation, Ms B received contact from the Swiss storage unit where her art had been stored – which she has shared with us. She hasn't suggested that any pieces are missing from the inventory received. So the evidence we hold indicates that Ms B is the owner of all the prints she paid for and so her funds, in this sense, were used for the agreed purpose.

We're also aware that S had other key contracts for the steps in the service it said it was providing. For example, it had contracts with printers and contracts with storage firms. And as above, we understand Ms B's art was stored at one of these facilities. So this is indicative of S setting up and running the business in the way you'd expect.

I've then considered whether there is convincing evidence at present to demonstrate that the true purpose of the investment scheme was significantly different to what was understood by Ms B, and so it was a scam rather than a genuine investment. Ms B has provided a judgement handed down in relation to the freezing of accounts linked to S and the alleged scam, and multiple affidavits, including an affidavit from the liquidator which was submitted to the court to evidence it was.

Value and resale of the art

As part of her evidence this was a scam, Ms B has raised concerns with the value of the prints purchased and their actual resale value and potential. However, ultimately, I have to place weight on the fact Ms B made the payments to S on the understanding that it would purchase specific pieces of art to be held on her behalf, and the evidence indicates this is what happened. We also know that there were contracts in place with the artists whose prints were sold. And that, when contacted, some of the newer artists didn't agree their work had been overvalued.

The value of art is also a subjective area. And that the nature of this industry means that mark-ups on print values aren't uncommon. Although I do recognise the mark-up indicated here is arguably higher than what is generally seen, this isn't enough in itself to say S was running a scam or fraudulent operation.

I accept that in the freezing order, the judge referenced that there was no real secondary art market for what was purchased and I also accept that this would be contrary to what investors were told. It seems that when sales did take place, S was buying back the art itself to enable the investor to make a profit, rather than actually selling it on to a new customer. So this indicates there may not be a genuine increase in market value or a known market for this art.

I also accept that who bought the art wasn't disclosed to the investors, and that buying the art back may have been a tactic used to get investors to then buy further prints, as it appeared their investment was running successfully. This does raise some questions around how S was operating and the investment scheme, especially in relation to information being misrepresented. But some potentially dubious business/sales practices aren't enough to persuade me that S's intention when taking the payments was to defraud Ms B. And the

judge made it clear that the merits of any fraudulent activity taking place (including findings on the actual value of the art and the existence of the secondary market) were not within the remit of the hearing and instead was something that had to be considered in a trial.

A "good arguable case for fraud" and the affidavits

Ms B, via her representatives, has referenced other comments by the judge including their findings that there was a good arguable case for fraud. However, the judgement also makes it clear the threshold for a 'good arguable' case is low – lower than 50%. Considering this test, I'm not persuaded the judge's finding can equate to it being *more likely than not* investors have been scammed. As above, the judge makes it clear that these matters will need to be decided at trial.

Ms B has provided copies of affidavits which were all signed prior to the freezing order from the judge. In particular, reference has been made to the liquidator's first affidavit. Ms B has then also referenced comments by an insolvency lawyer after the freezing order.

While our Service reviews each case on its individual merits, Ms B's representative has provided the same documents on a number of cases at this time, as they relate to S and its actions, not to any individual consumer. While I recognise the comments made in the first affidavit and the conclusions being drawn by the specific sections, I'm still not persuaded they should be interpreted in the way Ms B's representative is saying. I have reconsidered the evidence, but my opinion on it remains the same.

As I have previously set out in other cases, when reading this document in full, while the liquidator does make the arguments relied upon for this being fraud, they then move to *"Full and frank disclosure"* and the five pages that follow set out the arguments that could be made by those involved in S to counter the accusations raised.

I recognise the conclusions reached despite the inclusion of the disclosure section – and that this section is part of providing a balanced view. But this does indicate that there could possibly be legitimate reasons or explanations for some, or if not all the concerns raised. And this is just the liquidator's opinion of what could be said in response – it's possible, if not probable, that S would have had more to say on these matters. Had the case gone to trial, S may have expanded on the points raised, with evidence, beyond the liquidator's thoughts. And I note that with sight of this document and the other affidavits, the judge still determined that trial was the place for these matters to be decided.

In the same respect, the lawyer has given their comments on the matter and said a *"mini-trial"* took place. I accept it is their view that based on the information held *"on the balance of probabilities"* it should be determined that S was fraudulently trading. And Ms B has then concluded S settled outside of court because it was guilty of fraud and operating a scam. This is based on all the affidavits submitted and the freezing order, which included evidence that S's director had taken nearly £6 million without justifiable cause. But that isn't what was determined.

The *"mini-trial"* the lawyer describes was not an actual trial. And S settled the case on a no admission of liability/guilt basis and so this matter wasn't explored further. S did not agree it had acted fraudulently or was guilty of what Ms B is now alleging and we can't know what would've been discussed/revealed at an actual trial. The settlement is confidential – including the details of how much was paid and what this was actually paid for, so I don't consider this settlement can fairly be used to evidence the case against S. And for the reasons already set out, I don't accept that at this time, the other information we hold is enough to say, on balance, that this was a scam.

Conclusion

Ultimately, it doesn't seem to be in dispute that Ms B bought and now owns actual art. The nature of the alleged scam surrounds the value of this art and its potential as an investment. We hold evidence that S was engaging in practices you'd expect for a genuine business, and I don't hold persuasive evidence that its intention, from the start, was to defraud Ms B.

Instead, I consider that Ms B's and S's purpose for her making these payments did broadly align, so I don't consider the evidence currently supports the conclusion that her transfers were made as the result of an APP scam. So then Santander wasn't wrong in declining to refund Ms B under the CRM Code.

And as above, the majority of Ms B's funds were sent via card payments, and I haven't seen anything to indicate these should've been blocked at the time they were made. Or that they could've been recovered by the time she reported her concerns to Santander.

If new material information does come to light at a later date, then a new complaint can be made by Ms B to Santander. But I'm satisfied, based on the available evidence that I have seen and been presented with at this time, that this is a civil dispute.

My final decision

For the reasons set out above, I don't uphold Ms B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 28 October 2025.

Amy Osborne
Ombudsman