

## The complaint

B, a limited company, complains that Santander UK Plc have declined to refund them for their losses to a scam. They'd like to be reimbursed for their losses.

B is represented by Mr S who is a director.

## What happened

The background to this complaint is well known to both parties, so I will cover it only briefly here.

In 2019 Mr S was introduced to two different investment opportunities – which I will refer to as G and N. Between February 2019 and February 2021 he made ten payments from B's accounts to the investments:

Date	Payee	Amount
20 February 2019	G	£50,089.00
17 September 2019	N	£50,000.00
17 September 2019	N	£50,000.00
25 August 2020	N	£50,000.00
26 August 2020	N	£50,000.00
20 December 2020	N	£0.01
22 December 2020	N	£51,000.00
22 December 2020	N	£99,000.00
24 February 2021	N	£0.01
24 February 2021	N	£99,999.99

However, both G and N subsequently went into administration, and B's investment was lost. Mr S subsequently received a report from the administrators that led him to believe that B had been a victim of a scam.

Mr S asked Santander to reimburse B under the Lending Standard Board's Contingent Reimbursement Model (CRM) code. But the bank declined to do so, reasoning that it was a failed investment, and as such not covered by the code.

Not satisfied with this answer Mr S referred B's complaint to our service. He also complained about the service he had received from Santander, saying it had been abrupt and aggressive. One of our investigators looked into what happened but didn't see that Santander needed to do anything further. In summary, he reasoned that:

- B was not a "*micro-enterprise*", based on the number of employees they had through the period of the transactions.
- This meant that our service couldn't consider the payment to G, as this was made prior to our service's jurisdiction being expanded to cover businesses larger than micro-enterprises.
- This also meant that B couldn't rely on the protection of the CRM code for the

- payments to N.
- That Santander had discussed one payment with Mr S before releasing the funds and were satisfied with the answers he gave in relation to the purpose of the payment.
  - He didn't see that Santander should reasonably have prevented the payments at the time they were made, and the information from N's administrator only came to light considerably after B's payments.
  - He didn't think Santander's service had been unreasonable.

Mr S did not agree with our investigator, and as such the complaint 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.

Having done so, I agree with the outcome the investigator has reached. I appreciate this will be disappointing to Mr S, and I know this complaint is incredibly important to him. But here I'm not persuaded that it would be reasonable to ask Santander to reimburse B.

In the background above I've not detailed all the communication between the parties – it is intended to be a brief overview of what the complaint is about. This is in line with our service's remit as an informal alternative to the courts.

Both parties have submitted considerable information for me to consider – Mr S has provided a significant amount of information he received from the administrators of N. If I don't mention something, it's not because I've not considered it carefully or failed to take it on board, but rather that I do not see that I need to reach a fair and reasonable outcome.

### **Is B a micro-enterprise?**

I think the crucial issue for me to consider initially is whether B is considered a "micro-enterprise".

To clarify regarding what is a micro-enterprise, the *Payment Services Regulations 2017* (PSRs) refer to the definition provided in "Article 1 and Article 2(1) and (3) of the Annex to Recommendation 2003/361/EC of 6th May 2003 concerning the definition of micro, small and medium-sized enterprises" – which is also the same definition of micro-enterprise used by the Financial Conduct Authority for their Dispute Resolution (DISP) rules, that our service operates under.

This is used in conjunction with the European Commission's "*User Guide to the SME Definition*". This explains how to consider linked and partner enterprises, when deciding on whether an enterprise meets the definition of a micro-, small or medium enterprise.

The definition in Article 2 defines a micro-enterprise as an enterprise that

- (a) employs fewer than 10 persons; and
- (b) has a turnover or annual balance sheet that does not exceed €2 million

To account for changes in the business, and variations over time, the *User Guide to the SME Definition* recommends taking a period of three years before the reference year – so for example if a business met the criteria of a micro-enterprise for two out of the three years than it would classify as one.

So, here I've considered the size of B's business from 2017 through to 2021 – as this covers the years the payments were made, as well as two years prior. In each of these years the number of employees included in the filings with Companies House was over 20.

Now, given the nature of B's business I understand that some work will be done on a part-time or seasonal basis. So, it's reasonable to pro rate these employees compared to what would be considered full-time hours. But having reviewed the payroll information Mr S has supplied us with, I'm not persuaded that this would reduce the employee headcount in any of the years to fewer than 10 full-time employees.

Mr S has commented many staff will work on zero-hour contracts – but broadly, if they are consistently working the hours a full-time staff member would reasonably be expected to work, then they would be considered a full-time employee. And this is supported by the payroll information we've been provided. Mr S has mentioned the impact of the Covid-19 pandemic but not expanded on that. I don't have any persuasive evidence this significantly impacted B's employee numbers.

I understand that Mr S disputes this categorisation of his business, but I don't see that B could reasonably be classed as a micro-enterprise. I've gone on to consider the impact of this on B's complaint.

#### Can we consider a complaint about the payment to G?

Under the rules of our service – the DISP rules mentioned above – our service can consider a complaint from B, as it meets the definition of a *small business*.

But the rules of our service were only extended to include small businesses from 1 April 2019. And these changes to our rules weren't retrospective – so that means our service doesn't have the legal power to consider complaints about any events before then.

Here the payment to G was made on 20 February 2019, which is before our service's jurisdiction was extended. On that basis I'm afraid it falls outside the scope of our service to consider, and I won't be making any findings on Santander's actions in relation to this payment.

#### Is B covered by the CRM code?

The CRM code itself was a voluntary scheme which Santander were signed up to, whereby banks agreed to refund victims of authorised push payment fraud, subject to certain conditions.

But the text of the code doesn't include all customer of the bank – the code lays out that it only applies to consumers, micro-enterprises and charities, as defined in the PSRs.

I've already explained above why I don't see that B meets the definition of a micro-enterprise. And clearly B is not a charity.

For completeness sake, B is not a consumer either – as this is defined in the PSRs as “*an individual who, in contracts for payment services to which these Regulations apply, is acting for purposes other than a trade, business or profession;*” Here, the payments were made from B's account, and B is listed as the holder of the bond certificates. So, I don't see that these were payments made by an individual acting for purposes outside of their business.

I don't see that the CRM code applies here to B, and as such I do not see that B can rely on the protections provided.

*Should Santander be liable for refunding B for the transactions to N?*

I appreciate that Mr S feels very strongly that the payments made from B's account were part of a scam. But the broad approach given in the PSRs is that Santander are expected to make payments authorised by their customers as quickly and efficiently as possible. There is no obligation in the regulations that the bank should refund the customer if the purpose of the payment later turns out to be fraudulent.

Here there's no dispute that the payments were correctly authorised, and Santander followed the payment instructions correctly. So, the starting position in law is that there's no obligation on Santander to refund B.

But Santander, like all regulated financial firms in the UK, have legal and regulatory obligations to monitor accounts and account activity to look for signs that their customers may be falling victim to financial harm – such as fraud, scams and financial difficulty. If a particular transaction looks out of place, unusual, or concerning, then it's reasonable to expect the bank to intervene. What an appropriate intervention is will depend on the perceived risk, but the hope is that any fraud or deception is uncovered, and any losses prevented.

That said, I'm not persuaded that the payments out of B's account would have been significantly suspicious at the time. By the time of the first transaction to N on 19 September 2019 the account had already made payments of around £50,000 with no prior concerns. In the weeks beforehand, a payment of £94,000 had been made. So, I'm not persuaded that this would have stood out as unusual for the account.

This is similar for the later payments – while certainly the payments that are now in dispute are amongst the larger transactions on the account, I don't see that they stand out so significantly that Santander ought to reasonably have done more to intervene. Especially considering this is a business account.

But even if Santander had intervened, I'm not persuaded this would have prevented any further transactions. We know that Santander did flag the payment on 26 August 2020 for further review. But after speaking to Mr S both parties were happy to continue with the payment. I've no reason to doubt this answer would have been any different when asked for any of the other payments – particularly as any subsequent payments were going to the same payee. It's likely this would also lessen Santander's perceived risk.

I understand Mr S only came to believe that this was a scam after N entered administration. But I've not seen anything to suggest anyone had any concerns at the time of the payments. So, it wasn't unreasonable for Santander to process them as requested. And by the time Mr S contacted them with any concerns, no funds would have been recoverable from the receiving banks as N was in administration. As such, I don't see that Santander missed an opportunity to prevent any losses to B, and it wouldn't be reasonable to hold them liable for refunding B.

*Did Santander treat B reasonably?*

I understand why Mr S is frustrated by the events that transpired – and it seems that B has lost out through no fault of their own.

Mr S feels that Santander have been aggressive and unhelpful when dealing with his complaint. I understand this must have been an incredibly frustrating and upsetting experience for him. But having reviewed the available communication between the parties, I don't see that the service from Santander has been unreasonable. I can see there are times where they could have provided more information sooner or been more responsive. But overall, I see that they handled his fraud claim professionally.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 25 December 2025.

Thom Bennett  
**Ombudsman**