DRN-5802327

The complaint

Mr C complains Santander UK Plc won't refund money he lost to what he believes was an investment scam.

In bringing this complaint Mr C is supported by a professional representative, but for ease of reading I will refer solely to Mr C in this decision.

Background to Mr C's complaint

The background to this complaint is familiar to both parties, so I'll only refer to some key events here.

Between 2015 and 2020 Mr C was recommended, and entered into, a number of high-risk investments – including peer-to-peer lending and unregulated mini bonds – some of which followed cold calls from unregulated brokers. Over the years Mr C lost a considerable sum of money to these investments, which either failed or which he now considers were scams.

As most of the funds Mr C lost were transferred from his accounts held with Santander, he considers it is responsible for his loss. He considers Santander should have recognised a change in his account activity starting in 2015 when he began investing and that he was at risk of financial harm. He considers it should have warned him about the risks associated with the proposed investments and associated scams. He considers that an early intervention from Santander would have prevented his losses.

While Mr C has referred several complaints to the Financial Ombudsman for consideration, this decision only addresses Santander's actions in relation to one alleged scam, concerning a company I will refer to as "M", described further below. I will consider Mr C's complaints concerning other scams separately.

What happened

In September 2018, Mr C was introduced to an investment opportunity with M, a property development company, by an introducing firm he had an ongoing relationship with. Mr C understood M offered a fixed rate property bond, which would deliver a 12% annual return. Between 27 September 2018 and 20 September 2019 Mr C made three payments to M, totalling £30,000, from his Santander current account.

While Mr C initially received some returns from M, it later failed and went into liquidation. Mr C also learned the directors were under investigation for fraud and in 2021 the High Court ordered that M (and various subsidiary companies) be wound up after an investigation uncovered M had misled investors. Believing he'd been scammed, Mr C asked Santander to reimburse his losses under the Contingent Reimbursement Model (CRM) Code. Santander refunded £10,000 of Mr C's loss as a gesture of goodwill but said it was not responsible for any of his remaining loss. Unhappy with Santander's response, Mr C referred his complaint to the Financial Ombudsman.

Our Investigator didn't uphold the complaint. He noted that there was insufficient evidence to show M was operating a scam as defined by the CRM Code. He concluded Santander had therefore not acted unfairly by refusing to reimburse his 2019 losses under the CRM Code. He was also not persuaded that had Santander intervened before processing his payments it would've uncovered any cause for concern that would have resulted in Mr C not making the payments. As such he was not persuaded Santander could have otherwise prevented Mr C's losses.

Mr C disagreed and asked for his complaint to be reviewed by an Ombudsman. The complaint has 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.

Having done so, I have reached the same outcome as our Investigator and for largely the same reasons. I realise this will come as a disappointment to Mr C, but for the reasons I'll set out, I don't think Santander should reasonably be expected to have prevented Mr C's loss, nor is it required to reimburse his losses under the CRM Code.

I'm aware I've summarised this complaint and the relevant submissions briefly, in much less detail than has been provided, and in my own words. No discourtesy is intended by this. In this decision, I've focussed on what I think is the heart of the matter here. Therefore, if there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I consider is the right outcome. Our rules allow me to do this, reflecting the informal nature of our Service as a free alternative to the courts.

My role is to consider the evidence presented by the parties to this complaint, and reach what I think is an independent, fair and reasonable decision, based on what I find to be the facts of the case.

Who is responsible for Mr C's losses?

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 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 or reasonable for the bank to reimburse the customer even though they authorised the payment.

Is Mr C entitled to reimbursement under the CRM Code

The CRM code took effect on 28 May 2019, and so it is a relevant consideration for the losses Mr C suffered due to his 2019 payments to M – which were both made in September 2019.

Santander is a signatory of the CRM code. This requires it to reimburse customers who have been the victim of authorised push payment ('APP') scams, in all but a limited number of circumstances. But the CRM code doesn't apply to all APPs which ultimately result in a loss for the customer. It only covers situations where the payment meets the definition of an APP Scam (DS1(2)). The relevant definition for this case would be that Mr C transferred funds to another person (here M) for what he believed were legitimate purposes, but which were in

fact fraudulent (DS1(2)(ii)). The CRM Code expressly excludes *"private civil disputes"* from the scope of the Code.

I've considered the evidence available, but I can't fairly conclude that Mr C's been the victim of an APP Scam, in line with this relevant definition. As our Investigator set out in some detail, while it is clear M failed, causing Mr C to lose money; and there is also evidence that it misled investors; there is insufficient evidence that M intended to scam investors or that there was a misalignment between M's purpose for the investment funds and the purpose of investors when making payments.

It is accepted that Mr C's purpose for making the payment was to invest it in M and for the funds to be used towards, and invested in, various property developments. It is also evident, from Mr C's testimony and the documentation provided, that he believed this was a legitimate venture. I accept that M failed to deliver what was expected from the investment which has led to Mr C not receiving the returns he expected, and thereby suffering a financial loss, but I haven't seen any clear evidence this was always what M intended; or that at the time of the payments, M planned to use Mr C's funds in a different way to what was agreed.

I accept that the High Court has now ordered the winding up of M (and associated companies) on the basis that it misled investors about the security of the investments. But while an investment may have been mis-sold, or investors misled, this doesn't mean it was a scam. I haven't seen persuasive evidence that M's intention was to defraud Mr C when it took his funds. The information we currently hold suggests that M was a failed high risk investment venture, not a scam.

So, I don't consider the CRM Code definition of an APP Scam has been met. This means the CRM code doesn't apply to his 2019 payments and so I can't agree Santander was wrong to consider Mr C's situation a civil dispute, and to refuse to reimburse him under the CRM code.

If in the future, further evidence comes to light which demonstrates M's investment scheme was fundamentally different in purpose and does meet the CRM Code's definition of an APP scam, then Mr C can ask Santander to reconsider at that point. But as things stand, I can't require Santander to refund Mr C under the CRM Code.

Should Santander have otherwise prevented Mr C's loss?

Outside the provisions of the CRM Code, there are circumstances where I'd expect Santander to intervene before processing a payment if it had reason to believe a payment instruction was unusual or suspicious. But here I consider it unlikely that any intervention by Santander at the time of any of Mr C's payments would have uncovered any issues of concern that would have impacted his decision to make the payments.

M was a genuine company and there was no negative information about it in the public domain at the time of Mr C's payments that would have given Santander or Mr C reason to question the investment. The investment had been promoted by an appointed representative of an FCA regulated firm, and Mr C had received contracts and documentation from M, which would have given both him and Santander further confidence it was legitimate.

While I appreciate Mr C considers Santander ought to have challenged him on the overall suitability of the proposed investment, I disagree.

Santander's primary obligation was to carry out Mr C's payment instructions without delay. It wasn't to concern itself with the wisdom or risks of his payment decisions. Santander didn't

have any specific obligation to protect its customers from potentially risky investments. The investment in M wasn't an investment Santander was recommending or even endorsing. Santander's role here was to make the payments that Mr C told it to make. Mr C had already decided on that investment. And I find that Santander couldn't have considered the suitability of a third-party investment product without itself assessing Mr C's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr C (which there wasn't here) would've gone far beyond the scope of what I could reasonably expect of Santander in any proportionate response to a correctly authorised payment instruction from its customer.

As such, even if Santander had intervened in any of Mr C's payments to M, I don't think either party would have likely uncovered sufficient cause for concern about M such that Mr C would have chosen not to proceed with the payments. As such, I don't think Santander could reasonably have prevented Mr C's loss.

In summary, while I'm sorry to hear that Mr C has lost a considerable sum of money to what he believes to be a scam, I don't find there were any failings on Santander's part that would lead me to uphold this complaint.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

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

Lisa De Noronha
Ombudsman