

Complaint

Mr G is unhappy that Santander UK Plc didn't reimburse him after he reported falling victim to a scam.

Background

In 2019, Mr G was introduced to an investment opportunity with a company I'll refer to as Company S. He says he was looking for investment opportunities and, while conducting online searches, this one was promoted to him. He left his details and was contacted by someone who discussed the opportunity with him. He was told S was raising funds to invest in residential property. The bond would pay him an annual return of 9% and his capital would be returned to him on maturity after three years. He completed some basic online research about the company and says he didn't find anything that gave him cause for concern. He decided to go ahead with an investment and so made a transfer of £20,000 on 19 September 2019.

I can see that he did receive returns on this investment until the end of 2020. As the payments stopped, it occurred to Mr G that he might have fallen victim to a scam. He notified Santander but it didn't agree to refund his losses. It said that this wasn't an authorised push payment (APP) scam. Instead, Mr G had made a genuine investment that had gone wrong. Company S has since entered administration and so it would be appropriate for Mr G to attempt to recover his losses via the insolvency process.

Mr G wasn't happy with that and so he referred his complaint to this service. It was looked at by an Investigator who upheld it. Santander disagreed with the Investigator's view and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Under the relevant regulations, the starting position is that customers are responsible for payments they have authorised. Since Mr G authorised the payment in question, he is presumed liable for it. However, this is not the end of the matter. Banks are also expected to monitor account activity for signs of potential fraud. If a bank identifies indicators of risk, such as a payment being unusual or out of character, it should respond to that risk in a proportionate way. In addition to that, Santander was a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Signatories to the CRM Code were generally required to reimburse customers who fell victim to authorised push payment (APP) scams, except if a limited range of exceptions applied.

However, the CRM Code doesn't apply in all cases. In order for Mr G to benefit from its provisions, what happened here has to meet the relevant parts of its definition of an APP scam. In other words, these payments must have been ones where Mr G "*transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent.*"

The CRM Code is also explicit that it doesn't apply to private civil disputes. It says:

“This 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 first matter, therefore, that I have to decide is whether the provisions of the Code apply at all in view of the above. To find that this was fraud, I'd expect (a) there to be a misalignment between the purpose for which Mr G made the payment and the purpose for which it was procured by Company S; and (b) that difference to have been due to dishonest deception on the part of Company S.

The key consideration here is what the intentions were of the directors of Company S. I obviously can't know what they were for sure, so I have to look at what the other available evidence shows and use that to infer what their intentions likely were.

I've considered the available evidence carefully and, having done so, I'm satisfied that the evidence here is strong enough to support a finding that Mr G fell victim to an APP scam. I say that for the following reasons:

- I understand the principal director of Company S has been disqualified from serving as a director of a limited company for eight years by the Secretary of State for Business and Trade and that both the company and the director are now the subject of a substantive police investigation.
- This service has seen evidence that Company S claimed to have a formal agreement in place to lease local authority properties, but this has since been discovered to have been a false claim.
- Company S is in liquidation and, as I understand it, the Insolvency Service has confirmed that its directors have refused to co-operate with its activities.
- This director appears to have claimed that Company S had assets of £34 million, but it never filed any accounts with Companies House, and its accounts have never been independently audited.

Fundamentally, it appears that no evidence as been uncovered to show that investor money was ever used by Company S for the intended purposes of its investors. I'm satisfied that essential difference in the purpose for which Mr G made this payment and the purpose for which Company S procured it came about as a result of dishonest deception on the part of the directors of Company S.

Santander has pointed out that the payee here wasn't Company S, but an otherwise legitimate third-party intermediary. I've taken that into consideration, but the involvement of a genuine intermediary doesn't exclude the possibility of the CRM Code applying to this payment. It isn't necessary that the initial recipient of Mr G's funds was an account under the name of Company S. In this instance, I'm persuaded that Mr G's funds were under the effective control of the fraudster at the point they arrived with that intermediary and so the payment is capable of being covered by the CRM Code's provisions.

As a result of the above, I'm satisfied these payments were covered by the CRM Code. The CRM Code requires firms to reimburse customers in all but a limited number of circumstances. It is for the firm to establish that one of the exceptions to reimbursement applies. Broadly summarised, the CRM Code allows a firm to not reimburse its customer if it can show that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that the person or business with whom they transacted was legitimate.

I've considered whether Santander can fairly rely on either exception to decline to reimburse Mr G. It did provide a warning at the point made the payment. However, the warning was couched in very general terms and none of its contents were particularly relevant to someone making a payment like this one. As a result, I'm not persuaded it was an effective warning.

I'm also satisfied that Mr G made this payment with a reasonable basis for believing that he was dealing with a legitimate investment firm. He contacted the firm directly rather than being cold-called and, after learning about the investment opportunity, he carried out some basic online research and found nothing concerning. That's understandable because, at the time, Company S would have appeared credible to an ordinary observer.

Mr G's recollection of his interactions with Company S isn't very detailed, which is unsurprising given the time that has passed. However, from other cases, we know the firm promoted itself using a professional-looking brochure and website. It's likely it used similar materials when presenting the investment to Mr G.

The returns offered were higher than those available from traditional savings products. But Company S claimed to invest in residential property, and so it wasn't implausible for it to claim to be able to generate more generous returns. It also emphasised that its investments were backed by assets, making them appear more secure, and it claimed to have lucrative agreements with at least one local authority to provide homes for people in need in exchange for public funds.

In view of these factors, I don't think it was unreasonable for it to not have occurred to Mr G that he might not be dealing with a legitimate firm and so it follows that Santander should reimburse him under the CRM Code.

Final decision

For the reasons I've explained above, I uphold this complaint. If Mr G accepts my final decision, Santander UK Plc should refund the payment he made in connection with the scam (less the returns he received). It should also add 8% simple interest per annum to that amount calculated to run from the date it declined his claim until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 January 2026.

James Kimmitt
Ombudsman