

## **The complaint**

Mrs P complains about Santander UK Plc.

She says that she has been the victim of a scam and would like Santander to refund her loss.

## **What happened**

In February 2020, Miss P made a payment of £20,000 for an investment in a company I will refer to as 'L', for a convertible loan note in property investment.

Mrs P hasn't received any returns on her investment and hasn't been able to retrieve her funds. She says that she has been the victim of a scam.

Mrs p then made a complaint to Santander about what happened, but it didn't refund her – it said that this was a civil dispute.

Mrs P then brought her complaint to this Service. Our Investigator looked into things, and thought that Mrs P should be refunded her loss.

Santander didn't agree – it maintained that this was a civil dispute, and that as there was a intermediary involved in the transaction, and Mrs P didn't pay L directly, that her complaint wasn't one that was covered by the Lending Standards Board's Contingency Reimbursement Model Code (CRM code).

As not agreement was reached, the complaint has been passed to me to make 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.

Having done so, I am upholding this complaint. I'll explain why.

In broad terms, the starting position at law is that a business is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes, and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's Contingent Reimbursement Model Code ('the CRM Code'), which Santander has signed up to.

The CRM Code provides additional protection from APP scams, but only in certain circumstances. For example, the CRM Code only applies where the characteristics of the victim's payment meets the CRM Code's definition of an APP scam.

*Is this a scam as per the CRM Code?*

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: "another person for what they believed were legitimate purposes, but which were in fact fraudulent."

In order for this to apply, there are a number of requirements of which we'd need to be satisfied as well as information we'd need confirmation of. Firstly, we need to consider the purpose of the payment and whether Mrs P thought this purpose was legitimate.

We then need to consider the purpose the recipient had in mind at the time of the payments and whether this was broadly in line with what Mrs P understood to be the purpose of the payment.

Lastly, if we determine that there was a significant difference in these purposes, we'd need to be satisfied that the purposes were substantially different as a result of dishonest deception.

*What was the purpose of the payment? Did Mrs P think this was legitimate?*

From what we know, Mrs P was making the payments to L return for a convertible loan note in property investment and development. I can't see anything which would suggest that Mrs P didn't think this was legitimate.

*What was the purpose the recipient had in mind? Was that in line with what the consumer thought?*

When looking at the purpose question here, I've taken account of the wider circumstances surrounding the business and its director links and other businesses. After reviewing all the available evidence on cases linked to L these are the key findings:

- The director of L and other linked businesses has been disqualified as a director on Companies House for eight years by the secretary of state.
- The director has failed to provide liquidators with accounting records for liquidated businesses and has said he will not be providing these.
- The FCA issued a warning about the linked businesses in March 2020 saying they were providing financial services without authorisation.
- Despite saying 'S' (a linked company) had assets of £34m, it never filed any accounts and wasn't independently audited at any point. There was a further company that took over S which also never filed any accounts, and the director was the same person. This company contacted investors to say their money would be safe despite the FCA regulated intermediary going into liquidation, and then it cut contact with all investors.

- Police Scotland are now investigating the director, L and S, and other linked companies.
- In some instances, S' brochures claimed to have agreements in place with Edinburgh City Council to lease local authority properties – ECC have now confirmed to our service that it had no record of any such contract or agreement with S or the director.
- There is no evidence to suggest L, S or the linked companies were operating legitimately. There is no evidence of any investments made. Some consumers received small monthly returns while others received no returns at all.
- The Insolvency Service has also made comments following its investigation into L, S and the linked companies confirming investors were routinely deceived.

Ultimately there's no evidence which demonstrates that victim's funds were used in the manner agreed or prescribed by the businesses.

It's worth noting here that the payment made by Mrs P did go via an intermediary, a then FCA regulated firm. Santander has previously argued that this means the CRM Code doesn't apply, as the transactions were between Mrs P and the intermediary, rather than her and L. But I'm satisfied the payment journey here doesn't mean the CRM Code doesn't apply. Rather than setting out all the detail here, it makes sense to refer Santander to the published decision under reference DRN-4053598 (<https://www.financial-ombudsman.org.uk/decision/DRN-4053598.pdf>). Santander will see the circumstances are almost a mirror image of Mrs P' and the resulting findings are the same. It has also already been provided with a copy of this decision.

L confirmed receipt of Mrs P' funds within days of them being sent. This supports there was a pre-existing relationship for funds to be moved through the intermediary and that there was no involvement by Mrs P. And it confirms that those funds were moved through quickly, without Mrs PS having any control of them.

Furthermore, this service has considered a large volume of complaints involving L and S, and so have been able to satisfy ourselves that the quick onward transmission of funds was the modus operandi and an existing relationship between the intermediary and L/S was well-established.

*Was the difference in purpose the result of dishonest deception?*

The lack of co-operation by the director of both companies with the liquidators and the disqualification of the director persuade me that the inducement of payment by the victims was as a result of the director's and his businesses' dishonest deception.

In the absence of any convincing evidence that L or S were carrying out investments for the victims, I believe that the payments meet the definition of an APP scam, as per the CRM Code, and Santander should refund Mr S' losses.

*Do any exceptions to reimbursement apply here?*

There are two potential exceptions to reimbursement that Santander might rely on to deny a claim under the Code. Though it's made little argument that either should apply, I'll provide some brief findings on those potential exceptions. They can be summarised as:

- The customer ignored an effective warning given by the business at the time

payment was being made; and

- The customer made a payment without holding a reasonable basis for believing it was being made to a legitimate party for a legitimate purpose.

Santander says that Mrs P made the payment via phone, and so any warnings would have been provided verbally – it has provided an example of what would have been discussed. It has also provided a copy of the calls it had with Mrs P – but these calls only include confirmation of the payment – so I can't say that Mrs P was provided with an effective warning.

*Did Mrs P make the payment without a reasonable basis for belief?*

I don't think that Santander is able to establish that Mrs P didn't have a reasonable basis for belief in the investment's legitimacy. I say this because:

- The investment opportunity was introduced by a party Mrs P trusted and had used previously. The introducer had successfully presented an earlier investment, which reinforced Mrs P's confidence.
- Prior to making the payment to the intermediary 'N', Mrs P received an investment brochure and subsequently an investment certificate. These documents appeared professional and legitimate.
- Mrs P was aware that N was acting as a broker/intermediary, passing funds through to L. This seemed plausible to her and didn't raise red flags as she was aware that the funds will be sent to an FCA authorised and regulated broker.
- N was publicly listed as FCA-authorized, and this was confirmed by the introducer.
- While the promised returns were high, they were not excessively unrealistic. So it didn't seem implausible.
- At the time of the payment, there were no widespread public warnings regarding L. The FCA warning was issued only after the payment had been made.

I therefore find that Mrs P had a reasonable basis for believing that the investment was legitimate.

*Are there other remedies available to Mrs P?*

It is true that the FSCS will consider some claims against the intermediary. But not all companies that used the intermediary are to be covered; some are excluded. There's nothing the FSCS has published to say claims linked to L will be included.

The Insolvency Service has also publicly stated that the activity S was engaged in was not FSCS protected, setting that out as one of the frequent deceptions S carried out, in that it lied to investors about being covered.

Even if Mrs P were able to pursue a claim with FSCS, it and the Financial Ombudsman Service are separate organisations, and the rules governing whether a customer is eligible to receive compensation from FSCS are separate to those which apply to the Financial Ombudsman Service. FSCS will consider the claims submitted to it under the rules set for the FSCS by the Financial Conduct Authority.

Consumers might be permitted to pursue a claim to the Financial Ombudsman Service and the FSCS (should FSCS accept the consumer's claim) involving L, at the same time.

However, should a consumer receive compensation from the FSCS relating to their claim against L, the consumer may be required to pay any further compensation to FSCS that they receive from their bank (including as a result of any Financial Ombudsman Service award) relating to the consumer's complaint against L. Any questions relating to the terms on which compensation is paid by the FSCS should be directed to it.

### **Putting things right**

Santander UK Plc should pay Mrs P her loss of £20,000. On top of this, it should also pay Mrs P 8% simple interest from the date it declined her claim (less any lawfully deductible tax)

### **.My final decision**

I uphold this complaint. Santander UK Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 27 March 2026.

Claire Pugh  
**Ombudsman**