

## The complaint

Mrs L complains that Santander UK Plc did not refund a payment of £10,000 she says she lost to a scam.

## What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them again in detail here. In summary, Mrs L and her husband, Mr L, were looking to make a higher risk investment and found a company I'll call P who had a number of building projects. Mr and Mrs L transferred £10,000 from their Santander account to P on 17 September 2019 to invest via a loan note.

After receiving some returns and updates about the projects, delays occurred due to COVID-19 the returns eventually stopped. They contacted Santander via a representative as they thought they may have been victims of a scam. Santander assessed the transaction under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code but felt this was a civil dispute and did not meet the definition of a scam.

The complaint was referred to our service and our Investigator looked into it. They felt Santander acted reasonably when it treated the complaint as a civil dispute and did not recommend reimbursement under the CRM Code. As Mrs L and her representative did not agree, the complaint was referred to myself for a decision.

I issued a provisional decision in which I said that based on what I had seen so far, I thought this was more likely a civil dispute and not a scam. My provisional decision read as follows:

*It isn't in dispute that Mrs L authorised the payment of £10,000. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she is liable for the transaction. But she says that she has been the victim of an authorised push payment (APP) scam.*

*As mentioned earlier, Santander has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:*

*...a transfer of funds executed across Faster Payments...where:*

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer 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. The wording in the code is as follows:*

*“This Code does not apply to:*

*b) 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.”*

*I’ve therefore considered whether the payment Mrs L made to P falls under the scope of an APP scam as set out above. Having done so, I don’t agree that it does. I’ll explain why in more detail.*

*I’ve considered the transaction with the points above in mind. I’m satisfied the first point does not apply, as Mr and Mrs L intended to pay P, and the evidence shows the funds went to the correct recipient. I’ve therefore considered the second point and whether P took Mr and Mrs L’s funds with the intention of defrauding them. Or whether they were a legitimate company who Mr and Mrs L are dissatisfied with, as they did not produce the returns expected.*

*It should be noted that Mr and Mrs L’s representatives have provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service and as our rules allow, I will focus here on the points I find to be material to the outcome of the complaint. This is not meant to be a discourtesy to Mr and Mrs L, and I want to assure them I have considered everything they have submitted carefully.*

*Mr and Mrs L have provided copies of the documents they received when they signed up to the investment. This does not specifically stipulate what the £10,000 they are investing will be used for, just that it is going to the overarching ‘P’ group. Their representative has provided evidence about a housing project P was involved in. However, Mr and Mrs L have said they understood their investment was linked to an energy related project.*

*I’ve seen evidence that the energy project was started, and I can see Mr and Mrs L received a number of updates in relation to it, even after they raised the scam claim. These go into some detail about the project at various stages and overall, I’m satisfied the project existed. As mentioned earlier, when Covid-19 happened, Mr and Mrs L were warned of a number of setbacks and delays to the project which appear to be reasonable considering the significant world event at the time. So, based on what I’ve seen so far, I think it’s more likely P was a genuine company with a legitimate project that unfortunately has not successfully yielded returns up to this point. Mr and Mrs L stated that they were aware this was a high-risk investment, and from what I’ve seen that is what it appears this was.*

*It should be noted that as part of this investigation, I have reviewed P’s account statements to assess how Mrs L’s funds were utilised and how the account in general was used. Due to data protection issues I am unable to go into detail in this decision about what the statements contain. However, in summary, I can see P appeared to use the business account for payments related to the intended purpose. And this further reinforces that I think P was a legitimate business.*

*Mr and Mrs L’s representatives have said they should not have been offered the investment, as it should only have been offered to individuals with experience, so did not think it suitable for retail investors. However, I note that in the documents Mr and Mrs L signed when they made the investment, they acknowledged that they were aware of the risks and were experienced investors themselves. From what I have read, I’m aware Mr L was the more experienced investor, though the payment was made in Mrs L’s name, for tax purposes. And I also note that it appears Mr and Mrs L sought out a high-risk investment themselves and came across this opportunity themselves.*

*Mr and Mrs L’s representatives have said one of the directors of P has 20 companies; 11 of*

*which are now dissolved and 9 that were struck off. And they have suggested that P was set up in order to offer out loan notes to investors, so they could pass the investment funds to a secondary company owned by the directors, then allow P to eventually be struck off to avoid having to repay investors. The representatives have provided documents showing the financial records of P and the secondary company owned by P's directors, as well as some information related to a housing project run by P.*

*Having reviewed this, I can't agree that these show it's more likely P is not a legitimate company and instead set out to defraud Mr and Mrs L when it took their funds. I haven't seen enough for me to safely be satisfied a scam has occurred here. Nothing I've seen makes me think it's more likely P secretly transferred Mr and Mrs P's investment to another company owned by their directors, so that L did not have to repay them as part of a Ponzi scheme.*

*On balance, having carefully reviewed everything, I currently think it's more likely Mr and Mrs L made a high-risk investment to a legitimate company, that faced issues due to Covid-19 and has not been able to repay investors as expected.*

*I would finally like to cover off the argument Mr and Mrs L's representatives have made in regard to Mrs L's third-party bank refunding her for another transfer made to P, and around Santander responding to a request for a return of any remaining funds in the beneficiary account. They have said this is evidence this was a scam.*

*The third-party bank has confirmed that it decided to refund Mrs L in the circumstances but has not gone into detail about its decision. In any event, I'm satisfied Mr and Mrs L and their representatives have been given the opportunity to make their arguments and provide any evidence they feel is relevant, and I have reviewed everything on file to come to an outcome I feel is fair. Having done so on this case, based on what I've seen so far, I currently think this is a civil dispute and not a scam. And the actions of the third-party bank and Santander as a receiving bank do not affect this.*

Santander responded and confirmed they had no additional comments or evidence for me to consider.

Mrs L's representative responded and, in summary, said that Mrs L had made the payment to a legal entity I'll refer to as PAD, however the project she received updates about was in the name of a separate legal entity, PES. They felt that PAD had taken Mrs L's money with the intention of moving it to another organisation abroad then allowing PAD to collapse so they did not have to repay her. And they suggested PES had not existed at the time Mrs L's loan note was created.

They also forwarded a final decision from our service about a separate investment with a different company, which we had upheld. And they felt there were similarities which meant Mrs L's complaint should also be upheld.

### **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.

The main crux of Mrs L's representative's rebuttal is that Mrs L made a payment to and signed an agreement with PAD, however the project she received updates about was run by a separate legal entity, PES. They ultimately feel this is inappropriate and that moving money between separate entities can form the basis of a scam, as outlined above.

In the confirmation letter received by Mrs L on 4 October 2019 it confirms receipt of her funds and says they have been invested as per her discussion with the financial consultant. We do not have a copy of what was discussed in the meeting with the financial consultant, but we did ask Mrs L what her understanding of the investment was. In this, she mentioned the 'project' and referred to a specific farm, which is the location of the energy project. And goes on to say her understanding was all investments would be repaid, along with any outstanding interest, on the sale of the power-generating site.

I therefore think it's more likely Mrs L invested with the understanding her funds would be used to invest in the energy project ran by PES. And it therefore seems reasonable that her funds would be used to benefit the energy project and she would receive regular updates about this. Nothing I have seen suggests her funds were used for anything other than what she intended, or that it was done so without her knowledge, so I don't think this meets the definition of a scam.

Mrs L's representative has said that PES did not exist when she received the loan note. However, I can see that PES was incorporated on Companies House in July 2019, two months before Mrs L had a discussion with the financial consultant and agreed to invest £10,000 with PAD. I think it is therefore more likely Mrs L agreed to invest in the energy project and did so through PAD.

Finally, Mrs L's representatives have forwarded a final decision made by our service, in connection to a separate investment with a separate company. I appreciate they feel there are connections between the two, however I have to look at each individual case on its own merits. Having done so in this case, I think it's more likely Mr and Mrs L made a high-risk investment to a legitimate project, that faced issues due to Covid-19 and has not been able to repay investors as expected. And I think Santander therefore acted reasonably when it treated this case as a civil dispute and did not reimburse Mrs L with her funds. So, I do not recommend they take any further action on this case.

### **My final decision**

I do not uphold Mrs L's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 3 October 2024.

Rebecca Norris

**Ombudsman**