

The complaint

Mr P complains that Santander UK Plc ('Santander') won't refund the money he lost when he was the victim of a scam.

What happened

Mr P's neighbour told him about an investment he had with a company I'll refer to in this decision as Q. His neighbour had already invested £35,000 and had received monthly returns for a period of five or six months. Mr P expressed interest and provided his contact details, following which he received a call from an account manager. After discussing the investment, Mr P received an email from Q. In the email, Q described itself as an alternative property finance lender which provides UK property developers with short term bridging loans, whilst also providing investors with attractive fixed rates of return of 4.58% to 11.58% per year. Bonds were offered for periods of one to four years and payments were made to an FCA regulated escrow account (which in Mr P's case was a company I'll call N).

Mr P says he looked at Q's website and at reviews and decided to invest £10,000 in May 2020. He completed an application form and chose a one year fixed rate mini bond with a rate of interest of 4.58% per year. Mr P received a bond certificate and a subscription booklet.

Mr P was advised of a delay in receiving his initial interest payment as a result of a change in bank account. He then received a letter to say that Q might go into liquidation. Another creditor petitioned for the winding up of Q and in February 2021 Q was placed into liquidation. A letter from the liquidators to all creditors in July 2021, explains that it had found Q had not entered into any property deals, had misrepresented itself, held no security and had, essentially, been a fraud.

Mr P contacted Santander to report what had happened on 12 October 2020.

Santander assessed Mr P's claim under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). It said it met its standards as a sending bank and that the receiving bank confirmed it had met the standards expected of it, but that Mr P didn't take as much care as Santander would have expected so would not be reimbursed.

Mr P was unhappy with Santander's response and brought a complaint to this service. Mr P says the insolvency service has confirmed this was a scam and he is aware that many other victims have been reimbursed by their banks.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld. She concluded that Mr P was the victim of a scam based in part on a letter from the appointed liquidator of Q which said that Q misrepresented its business model and operation, and because funds weren't invested as expected.

The investigator went on to consider Mr P's claim under the CRM Code and said that Santander couldn't fairly rely on any of the exceptions to reimbursement set out in it. Mr P had a reasonable basis for believing the investment was genuine as he had first hand testimony from a friend, had checked Q on Companies House and looked at reviews, had

received legitimate looking documentation, and the rate of return was reasonable. She also said Santander's warning wasn't effective.

Santander didn't agree with the investigator's findings. In summary it said:

- This is not a scam but an investment that didn't come to fruition and Mr P has other avenues to pursue. Mr P was dealing with N, a part of the Q group, that appears to have been FCA regulated - which means that the Financial Services Compensation Scheme (FSCS) will be considering claims for investors, and Mr P should approach the administrators.
- Santander agrees the rate of return wasn't too good to be true and the literature looked genuine, but this was because Q was a legitimate company that ultimately went into liquidation.
- There is no evidence of any prosecutions or arrests. If this changes, Santander will reconsider its stance.
- Mr P didn't complete any checks before investing and relied on the recommendation of a friend. Santander provided a warning which asked him to complete thorough checks, but Mr P didn't do so.
- The transfer was made to an account in Mr P's name with a genuine investment company. Santander said that it has established that funds were sent to the account of an FCA authorised safe custody and safe administration service (W) that passed funds on to N shortly afterwards. Santander also questioned whether Mr P's funds ended up with Q, given that the receiving bank that concluded Q operated a scam wasn't the bank that appeared to have received Mr P's funds from W.
- In making the transfer Santander acted in line with industry standards. Santander went on to raise the case of *Philipp v Barclays Bank plc*. In that case it was decided that where a bank receives a payment instruction from a customer which is clear and leaves no room for interpretation, if the customer's account is in credit, a bank's primary duty is to execute the payment instruction. The duty is strict, and the bank must carry out the instruction promptly and without concerning itself with the "*wisdom or risks of the customer's payment decisions*". Santander doesn't believe it breached any duty owed to Mr P.

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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position in law is that Santander is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. It's not disputed that Mr P made and authorised the payment, although I accept that when he did so, he didn't think his funds were at risk.

Santander is a signatory of the CRM Code and has considered Mr P's claim under it. I'm uncertain why Santander said in its response to the investigator's view that Mr P held an account in his own name with N, which would mean the CRM Code doesn't apply. I haven't seen any evidence to persuade me this was the case or that Mr P had a relationship with N. He dealt with Q and was advised to send his funds to an FCA regulated account with N.

After assessing Mr P's claim under the CRM Code Santander is now saying Mr P has a civil dispute and that he should seek to recover his losses through the liquidator. The CRM Code doesn't apply to civil disputes so if Mr P isn't the victim of an authorised push payment (APP) scam as defined in it, Santander wouldn't be liable for his loss. So I've considered this point first.

The CRM Code defines an APP scam as:

"...a transfer of funds...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) (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

I have carefully considered whether this definition has been met.

Firstly, I've thought about the purpose of the payment and whether Mr P thought this purpose was legitimate. Mr P thought he was buying a fixed term bond from a company that provided property developers with short term bridging loans and at the same time offered a good rate of return. I'm satisfied Mr P thought he was making a legitimate investment.

I turn now to consider Q's purpose at the time the payment was made and whether this was broadly in line with what Mr P understood it to be. I have seen a letter dated 2 July 2021 from the joint liquidator. The liquidator agreed that the letter could be shared with banks to assist in fraud claims but that it shouldn't otherwise be reproduced. Given this point, and the fact Santander has had sight of the liquidator's letter, I don't propose to go into detail about what it says, except to say that the liquidator is clear that investors' funds were not used for the stated purpose and the whole premise of Q's business model was based on misrepresentation. Ultimately there's no evidence which demonstrates that Mr P's funds were used in the manner agreed or prescribed by Q.

I've also taken into account the fact that Q was offering mini-bonds to non-professional investors. The sale of such bonds to retail investors has been banned by the Financial Conduct Authority since January 2020. I wouldn't expect a legitimate business to act in this manner.

Information this service has seen but cannot share for data protection reasons shows that an account held by Q was considered to be a scam by the account provider (which I'll refer to as Bank C in this case).

In the absence of any convincing evidence that Q was carrying out investments, I believe that Mr P's payment met the definition of an APP scam, as per the CRM Code.

I accept that there haven't been any arrests and there is an on-going police investigation but can't see any reason why this would impact the ability to move forward with this complaint. As Santander has already reached an outcome under the CRM Code then the R3(1)(c) provision is not applicable in this instance. And a prosecution isn't the only determining factor in deciding if a customer is the victim of a scam.

Santander has said that the CRM Code doesn't apply in this case because Mr P sent funds to a legitimate intermediary before they were passed on to N. Santander has also suggested that the funds that W passed to N may not have gone to Q's account. I agree that the payment journey is not as clear as it might be, so I've considered what I do know and what is most likely to have happened in Mr P's case.

Santander has obtained evidence which shows that Mr P's funds went to an account in the name of W and from that account to an account with a bank I'll refer to as Bank D. This service has seen confidential information from Bank D, which confirms that it held an account in the name of N. I've carefully considered the statements for this account. Whilst I'm unable to trace Mr P's payment, because the statements held by this service start just after his payment was made, I consider it more likely than not that Mr P's funds ultimately reached Q. This is because the statements show credits from various individuals which are then passed to Q (and other accounts). And, whilst I cannot be sure that ultimate recipient of Mr P's funds was Q's account at Bank C, I think this is the most likely scenario given what this service knows from our investigation of other cases.

The involvement of a genuine intermediary, or more than one intermediary as is the case here, does not exclude the possibility of the CRM Code applying. The CRM Code doesn't require the initial recipient of a payment to be an account owned by and for the benefit of a fraudster. Here, I'm persuaded the funds were under the control of the fraudster at the point they arrived at W and then N (the intermediaries). Mr P does not appear to have had a customer relationship with W or N, and I'm satisfied W and N were acting on behalf of Q and not Mr P. The money was out of Mr P's control and so the payment here is capable of being considered under the provisions of the CRM Code.

Santander has said Mr P should pursue his loss through the FSCS rather than his bank. The fact the FSCS are considering these claims does not prevent Mr P from recovering his loss from Santander. A claim with the FSCS should be used as a last resort. Here, the complaint against Santander is viable, in jurisdiction and the voluntary CRM Code applies. So the point raised by Santander does not prevent me from considering Mr P's scam claim.

I've gone on to consider whether Santander should reimburse some or all of the money Mr P lost in line with the provisions of the CRM Code it has signed up to, and whether it ought to have done more to protect Mr P from the possibility of financial harm from fraud.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances which I have set out below:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning.
- The customer made payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

There are other exceptions that do not apply to this case.

It is for Santander to establish that it can fairly rely on one of the exceptions to reimbursement set out in the CRM Code. In this case Santander say Mr P ignored an effective warning it gave during the payment journey, and that he made the payment without a reasonable basis for believing that the payee was the person he was expecting to pay, the payment was for genuine goods or services and/or the person or business he was transacting with was legitimate.

I am satisfied that under the terms of the CRM Code, Santander should have refunded the money Mr P lost. I am not persuaded any of the permitted exceptions to reimbursement apply. I will address the reasonable basis for belief exception first.

Mr P's neighbour, who had received profits over a number of months, referred him to Q. I consider that a personal recommendation like this would be powerful when considering whether Q was offering a legitimate investment opportunity. Mr P was given an account manager who explained how the investment worked. He then completed his own research

by checking Q on Companies House. Q was incorporated in 2018 and the nature of business recorded was consistent with what Mr P might reasonably expect. Mr P also looked at reviews of Q and says they were mixed as he might expect. There was also nothing in Mr P's dealings with Q which ought to have caused him any particular concern. Mr P received official looking documentation and the rate of return he was offered by Q wasn't too good to be true. Overall, I think this was a sophisticated scam and the steps Mr P took to verify the investment were reasonable.

The CRM Code says that where firms identify authorised push payment (APP) scam risks in a payment journey, they should provide effective warnings to their customers. This should include appropriate actions for the consumer to take to protect themselves from scams like the one Mr P has fallen victim to. So I've gone on to consider whether Santander provided Mr P with an effective warning and, if it did, whether he ignored such a warning.

Santander say that Mr P chose making an investment as the payment purpose and was provided with an on-screen warning during the payment journey that said:

"If you've been cold-called or contacted out of the blue about an investment opportunity, this is highly likely to be a scam.

Criminals can spoof genuine companies to trick you in to making payments for fake investments. Please always complete thorough checks to make sure the company or person you're dealing with is genuine before transferring any money.

If you're at all nervous, please cancel this payment and call us immediately."

I'm not persuaded this warning would have caught Mr P's attention or resonated with him. It starts with some bold wording which relates to cold calls or out of the blue contact, but Mr P didn't find out about the investment in this manner. It went on to discuss companies being spoofed, which again wasn't what was happening here. And the wording about completing thorough checks could be seen to relate to spoofed companies. The final bold section advises to call if a customer is nervous about a payment. Given Mr P's interactions with his neighbour about the investment I can understand why the warning didn't resonate and he didn't have any concerns. I also don't consider the warnings Mr P saw went far enough to bring to life the common features of the scam he fell victim to and positively influence his decision making.

Given that I'm not satisfied the warning Santander gave Mr P was effective, it follows that he didn't ignore an effective warning and so Santander cannot reasonably rely on this exception to reimbursement.

Santander has also argued that it shouldn't intervene in legitimate transactions without good reason and has referred to the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25*. I appreciate that the court in that case said, among other things, that the starting position is that there is an implied term in any current account contract that a bank must carry out a customer's instructions promptly. But, apart from any implied duty it is under, Santander is a signatory to the CRM Code. And it is these obligations under the CRM Code, rather than any other duty or form of good practice, that I think it has failed to meet here. So, I don't think Santander's arguments are relevant to this case, and I still think it has failed to meet its obligations under the CRM Code.

Overall, I'm satisfied Mr P was the victim of a scam and that as none of the exceptions to reimbursement set out in the CRM Code apply, he should be reimbursed in full together with interest as set out below.

My final decision

For the reasons stated I uphold this complaint and require Santander UK Plc to:

- Pay Mr P £10,000; and

- Pay interest on the above amount at the rate of 8% simple per year from the date Santander made its decision not to reimburse under the CRM Code to the date of settlement.

If Santander UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it has taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 September 2024.

Jay Hadfield
Ombudsman