

## **The complaint**

Ms H complains about Santander UK Plc. She says that it failed to protect her from a scam and would like it to refund her the money she has lost.

Ms H's complaint has been referred to this service by a professional representative but for the sake of readability, I will mainly just refer to Ms H.

## **What happened**

In 2018, Ms H was looking to make an investment and was introduced to a company I will refer to as 'B' by an advisor.

Ms H says that she thought she was investing into property development and would receive a fixed return. Between 2018 and 2021, Ms H sent B over £400,000.

B went into administration and Ms H says that she didn't receive the promised returns and felt that she had been taken in by an elaborate scam. Unhappy, she complained to Santander as she felt it should have protected her from the scam when she made the payment from her account with it. Santander considered Ms H's complaint, but said it did not agree this was a scam and instead felt it was a failed investment, so treated the case as a civil dispute.

Unhappy with this outcome, Ms H brought her complaint to this Service.

Our Investigator looked into things and reviewed it under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. They agreed it was more likely a civil dispute between Ms H and B. On balance, they did not think the evidence showed B didn't intend to act in line with the agreement or pay the funds described in the contract. And instead, they felt it was more likely this was an investment that failed.

Ms H's representatives responded to the view saying they and Ms H disagreed with the Investigator. As an informal agreement could not be reached, the complaint has been passed to me for 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.

Ms H's representatives have written at some length about the issues surrounding this case. I may not comment on everything they have told us, nor every individual point raised. I want to reassure both parties though that this doesn't mean I consider things unimportant, nor that I haven't reviewed everything. While I've carefully thought about all of the information on the case, I'm going to focus on what I consider the crux of this complaint and the key facts. This reflects the informal nature of our service.

It isn't in dispute that Ms H authorised the payment she made to B. Because of this, the starting position – in line with the Payment Services Regulations (PSR's) 2017 – is that she is liable for the transaction.

In broad terms, the starting position at law is that a bank 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. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer, even when they have authorised a payment.

In this instance, there are two main issues for me to consider. Firstly, should Santander have intervened and asked questions about the payments and would that have uncovered that Ms H was being scammed. Secondly, should Ms H receive a refund under the CRM.

Based on the size of the payments Ms H made, I would've expected Santander to have identified a potential risk of financial harm and asked Ms H a number of open questions about the Payments.

The type of questions I'd expect Santander to have asked would include: how Ms H found the investment, what return she had been offered and what checks she had done on B. Santander also may have asked what documentation Ms H had received in relation to the investment.

But, even if Santander had asked the type of questions I would've expected, I'm not satisfied that it would've prevented Ms H from making the payments or prevented her loss.

I say this because all of the information available about B at the time of the payments, suggested that this was a legitimate investment.

B was a UK incorporated company since 2011 and all of the documentation that Ms H received looked professional. The rate of return wasn't completely unrealistic, and I haven't seen any negative information that would've been available that suggested this was a scam.

So, even if Santander had asked open probing questions, I not satisfied that they would've been concerned by the information Ms H would've given them. On that basis, I don't think they acted unreasonably in processing Ms H's payment instruction, and I'm not satisfied that they could've prevented her loss.

In relation to whether Ms H should receive a refund under the CRM. The CRM Code provides additional protection from APP scams, but only in certain circumstances. For example, the CRM Code only applies where the victim's payment meets the CRM Code's definition of an APP scam. Further to this, the CRM Code came into effect on 28 May 2019 and isn't retrospective. As that's the case, only the payments made by Ms H after 28 May 2019 are covered by the CRM Code, the payments made before it fall outside the scope of the CRM.

But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code 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.”*

I've therefore considered whether the payments Ms H made to B fall under the scope of an APP scam as set out above. Having done so, I don't think that they do. I'll explain why in more detail.

In order to determine if Ms H has been the victim of a scam, I have to consider if her intended purpose for the payments was legitimate, whether the intended purposes Ms H and B were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the B.

Based on the evidence available to me, it appears Ms H was intending for the funds to be invested in specific building projects around the country. She then expected to receive regular returns on her investment. The paperwork she received prior to investing appeared to be professional and detailed, and B was listed on Companies House as being incorporated since 2011. So, I see no reason why Ms H would not have thought this was a legitimate investment.

I've gone on to consider whether B's intended purpose for the payments aligned with what Ms H intended. I've seen evidence that three building projects were completed by B. They also had other projects ongoing, however these had to be sold to other developers after B entered into financial difficulty. On balance, I think this shows B was a legitimate company involved in legitimate building projects and I think it's unlikely a scam company would have completed three large scale building projects, at significant cost, in order to entice more funds from investors.

I note that B paid unregulated introducers a high level of commission which in turn made the level of interest offered to investors unlikely to be sustainable. However, whether or not unregulated investors were used to introduce the investment does not indicate that B set out to defraud investors of their funds, with no intention to invest the funds into building projects. And while I have not seen evidence of the levels of commission paid to introducers, I don't think there is a correlation between the level of commission and Ms H being the victim of a scam in the circumstances.

It should be noted that the liquidator for B has not provided any evidence to suggest they were acting fraudulently or operating a Ponzi scheme. My understanding is they are still in the process of investigating a significant number of transactions made from B to various subsidiary companies, due to the way in which the B network was set up. However, at the moment there is no indication that these transactions were made with the intention of hiding these funds and not using them towards development projects.

I also note that B had not filed accounts since 2018. While it appears B has not managed its finances correctly, I don't think this therefore means they were conducting a scam or that they intended to scam investors at that time. During this period in question, B were completing development projects around the country, and I think this highlights that they intended to use customer's investments in these development projects.

On balance, I think B's intended purpose for the funds aligned with Ms H's and nothing I have seen indicates to me that B intended to defraud her. Instead, I think it's more likely this was a failed investment. So I don't think it meets the definition of an APP scam. And I think Santander acted reasonably when it treated the case as a civil dispute.

I also want to assure Ms H that I have considered her vulnerabilities as part of this decision. As I have determined the payments cannot be considered under the CRM Code, Santander was not required to automatically reimburse Ms H if she was found to be vulnerable as set out in the Code. And while outside of the Code, we would expect a bank to make reasonable adjustments and treat vulnerable customers fairly, I've seen no indication that Santander was aware of Ms H's vulnerabilities to be able to make reasonable adjustments as and where needed.

I'm really sorry to disappoint Ms H, as I know she's lost a significant amount of money. But I'm not satisfied that I can fairly ask Santander to refund her based on the evidence that is currently available.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 13 January 2025.

Charlie Newton  
**Ombudsman**