

## The complaint

A company which I'll refer to as S complains that Santander UK Plc ('Santander') won't refund the money it has lost.

Mr W, who is a director of S, brings the complaint on S' behalf.

## What happened

Mr W says he had been involved in developing properties for some years through his company, S. A friend he had known for around ten years introduced him to someone I'll refer to as M in this decision. He said M had partnered with a law firm (L in this decision) to invest in probate properties that could then be sold on at a higher price. Mr W attended a meeting with M at a hotel where he says M showed him his passport and details of various properties he could invest in. There were two properties Mr W was particularly interested in. It was agreed that he would invest in one property first and M advised him that the investment would be for £30,000 and he would receive his money back plus a return of £20,000 on 17 December 2021. On 16 September 2021 Mr W made a trial payment of £1 and then paid £30,000 from S' account to M's business account.

Mr W says that he was happy with his initial investment and decided to invest in a second property. On 22 September 2021 he paid £50,000 (in two instalments of £25,000) and expected a return of £50,000 on 22 December 2021. M said he was having some issues with his business account, so this payment was made to his personal account.

Mr W didn't receive any profit in December 2021 and M made excuses and later got his representative to send fake screenshots showing payments being made. On 28 March 2022 Mr W received an email from M which said he would receive the full amount plus profit by the end of the month. Mr W received a call from the police on 31 March 2022 to say that M was in custody, admitted he had scammed Mr W and said the funds were in M's personal account. On the same day, Mr W raised a scam claim with Santander.

Santander didn't agree to reimburse S. It said Mr W had a civil dispute with M.

Mr W was unhappy with Santander's response and brought a complaint to this service.

### *Our investigation so far*

The investigator who considered this complaint recommended that it be upheld in part. He said that he was satisfied Mr W was the victim of a scam and so the CRM Code applied. Under the code, Santander could fairly rely on the reasonable basis for belief exception for a number of reasons, including that the rate of return offered was too good to be true, Mr W didn't complete appropriate research and Mr W hadn't been able to explain how the investment worked. But Santander should reimburse 50% of S's loss as Santander hadn't met its standards by providing what the CRM Code describes as an "Effective Warning". Finally, the investigator said Santander had done what it could to recover S' funds.

Mr W, on behalf of S, accepted the investigator's findings. Santander didn't respond so I issued a provisional decision on 26 March 2024. In the 'What I've provisionally decided – and why' section of my provisional decision I said:

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

*When thinking about what is fair and reasonable in this case, I've considered whether the CRM Code applies and, if so, whether Santander should have reimbursed S under the provisions of it, and whether it ought to have done more to protect her from the possibility of financial harm from fraud.*

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

*Does the CRM Code apply?*

*The CRM Code provides 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 authorised push payment (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."*

*In other words, the CRM Code isn't a general protection for customers against non-receipt of or defective goods or services. It only applies if it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met. So, I need to consider not simply whether M made any misleading claims but whether Mr W, on behalf of S, was induced to make payments with the intent to defraud him from the outset. That would mean that M obtained payments for a purpose that was different to the one Mr W thought he was making the payments for because of dishonest deception.*

*I've carefully considered the evidence to see whether it's more likely than not, rather than just as likely, that M was acting fraudulently. Whilst I understand Mr W will be extremely disappointed to hear this, I'm not persuaded the evidence supports such a conclusion.*

*I've seen evidence from the police which says that it has received a number of reports, but after reviewing them the police decided that its evidential threshold hadn't been reached and that it wouldn't proceed with its investigation. The police advised those who had "loaned" M money to pursue civil recovery. Essentially the police decided this was a high risk investment with an individual who wasn't registered with the Financial Conduct Authority.*

*So, the evidence from the police doesn't lead me to conclude that the high bar for fraud has been met. I've seen emails between Mr W and M about the investment, but these don't help me to determine intent at the time M took funds from Mr W/S. And I haven't seen any other evidence which leads me to conclude it's more likely than not Mr W is the victim of a scam. The fact that other people have lost money in similar circumstances is not enough to demonstrate it's more likely than not Mr W was the victim of a scam.*

*That's not to say I rule out the possibility that the funds were obtained dishonestly, but there simply isn't enough evidence to support such a finding. That means I can't consider these circumstances under the provisions of the CRM Code, and I don't intend to ask Santander to refund the lost money.*

*As I'm not persuaded that Mr W fell victim to a scam, I don't think Santander had any obligation to try and protect his business' funds or to try and recover the money his business lost. But, in any case, I've listened to the call Mr W had with Santander when it blocked his £30,000 payment. Mr W said that the payment was being made to a colleague that he knew. I don't consider there was anything concerning about this, and I note that there were previous large payments from S' account. While I consider Santander should have asked more about the payment purpose, I'm not satisfied Mr W's responses would have led to concern or led Mr W to decide not to go ahead. He had met M and agreed a business deal he believed to be genuine.*

*Overall, I'm sorry Mr W has lost out here, but I can't see that I can hold Santander responsible for his loss.*

Santander didn't respond to my provisional decision. Mr W let me know that he didn't agree with my provisional findings and said he believes there is evidence of criminal intent. He provided additional evidence from the police which says that the Crown Prosecution Service referred the case back to the police to take further action, and additional resources have now been allocated to this. Further, the fact the police had cautioned and questioned M was relevant and Mr W referred to a previous decision issued by this service. Finally, Mr W said M kept promising returns would be paid but this didn't happen and then he cut all contact with Mr W.

### **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.

After carefully considering the additional submissions and evidence provided by Mr W on behalf of S my decision is the same as my provisional decision, and for the same reasons. I have reproduced my provisional decision above so will not repeat it here. I'm not satisfied that on the evidence available I can fairly conclude that S is the victim of an APP scam as set out in the CRM Code and don't consider Santander should provide a refund for any other reason.

The fact that the Crown Prosecution Service referred the case back to the police for further investigation demonstrates that a decision to charge has not yet been made. It is possible that material new evidence becomes available after the police have completed the suggested actions, which supports a conclusion that M took funds from Mr W/S using dishonest deception. If this happens, Mr W can ask Santander to reconsider the fraud claim he has brought on behalf of S and, if not satisfied with their response, he can bring a new complaint to our service.

Mr W has referred to a previous case this service has considered. Each case is assessed on its individual merits, so the outcome on another case won't influence the outcome in this case.

### **My final decision**

For the reasons given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 6 June 2024.

Jay Hadfield  
**Ombudsman**