

Complaint

Mr P is unhappy that Santander UK Plc didn't reimburse him after he told it he'd fallen victim to a scam.

Background

The background to this case is well known to the parties, so I don't intend to set it out in detail here. Instead, I'll summarise the key facts. Mr P had previously invested in a company that was later liquidated, resulting in a loss of over £40,000. In February 2023, Mr P was contacted by a firm, which I'll refer to as B. B claimed it could recover the funds he lost in that investment. Mr P conducted a preliminary check on Companies House and confirmed that a company with that name was registered there. However, although he didn't know it at the time, he was not dealing with a legitimate firm but with scammers.

Mr P received a letter from the scammers indicating that the Insolvency Service had authorised B to assist investors in recovering assets. Mr P also had several phone conversations with people who were apparently employees of B. There were several charges that he was told were necessary in order for him to recover his investment. He used his Santander account to make the following payments to several payees. All of the payments were made to bank accounts in the name of private individuals.

1 March 2023	£2,584.15
6 March 2023	£3,876.23
8 March 2023	£4,651.48
10 March 2023	£5,582.89
14 March 2023	£6,000

After making several payments to cover purported fees and charges, Mr P grew suspicious because the demands for funds continued. Realising he had been deceived, Mr P reported the scam to Santander. It considered his complaint under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Having done so, it agreed to refund 50% of his losses on the grounds that it could've done more to protect him. However, it didn't agree to refund him in full because it considered he was partially responsible for his own losses. It also successfully recovered a little over £2,000 from the receiving bank which has since been returned to him.

Mr P wasn't happy with Santander's response and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. He didn't think that Mr P had a reasonable basis for believing that the request for payments was genuine and so he found Santander's decision under the CRM Code to be a reasonable one.

Mr P didn't agree with the Investigator's view and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account.

However, that isn't the end of the story. Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams in all but a limited number of circumstances.

Santander has already agreed that it could've done more to protect Mr P and has refunded 50% of the payments made. However, it says Mr P should be considered partially responsible for his own losses. In other words, it is seeking to rely on an exception in the CRM Code where *"the customer made the payment without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate."*

I've considered the available evidence carefully and, while I accept that Mr P did sincerely believe that he was making payments to cover costs associated with recovering his losses, I'm not persuaded that belief was a reasonable one.

Mr P was cautious enough to check Companies House to verify B's registration, which suggests he understood the need to carry out checks before proceeding. Given the nature of the claim and his previous experience with the liquidation of the company he invested in, I don't think it's unreasonable to have expected Mr P to have conducted further checks to ensure that B legitimately had a connection with the insolvent company or the liquidator. Information on the Insolvency Service's website showed that only the Official Receiver was authorised as the sole liquidator and warned against third-party requests for payments.

Mr P's representative argued that, at the time of the payments, there was no warning regarding B on the website of the regulator, the Financial Conduct Authority. It says that this shows there was no real indication at the time of a fraud risk. But given Mr P's prior experience with losses related to his investment, I think he should've conducted checks beyond merely verifying that B was on the Companies House register.

I'm surprised Mr P didn't have any concerns that, instead of making payments to an account in the name of B, he made payments to bank accounts in the name of three private individuals. I think he should've found this concerning and I'm not convinced that the fraudster's explanation (that the payees were "escrow agents") was a particularly convincing one.

In addition, I find it concerning that Mr. P didn't question why he was being asked to pay over £25,000 to access an investment he believed was worth a little over £40,000. While he may have thought that these payments would eventually be returned, the amount he was being asked to pay represents a significant portion of his expected recovery. This discrepancy should, in my view, have prompted him to reconsider the situation more carefully.

Instead, it appears that he made his first payment within three working days of the fraudsters setting out the total costs he was expected to cover. I understand the urgency he must have felt to recover his lost funds, but this haste seems to have clouded his judgment. He seems to have rushed into his decision without taking the time to gather enough information or consider any possible warning signs.

I don't say any of this to downplay or diminish the fact that Mr P has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for him and the position he's found himself in. However, my role is limited to looking at the actions and inactions of the bank and I'm satisfied it didn't do anything wrong in only refunding half of his losses.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 December 2024.

James Kimmitt
Ombudsman