

## The complaint

Mrs C complains that Santander UK Plc ('Santander') won't refund the money she says was lost as the result of a scam.

## What happened

In 2020, Mrs C was told about an investment by her family. The investment was through a company I'll refer to as B. B would purchase cars with investors funds, then lease the cars out to individuals who might not otherwise be able to access a leased vehicle. Mrs C was told she would receive a monthly return and, on maturity, a lump sum of capital and interest.

Mrs C says family members had invested previously and received monthly returns. Also, a family member had met the owners. Mr C says she looked online and saw positive reviews about B.

Mrs C made two payments to B. The first payment was in October 2020 for £28,000 and the second payment was in January 2021 for £14,000.

Mrs C received three monthly returns of £534.72 between November 2020 and January 2021.

In March 2021, B went into administration.

Mrs C believes the investment was a scam, and through a professional representative, raised a fraud claim with Santander in July 2023.

Santander investigated Mrs C's fraud claim but declined to refund her. Santander say Mrs C has a civil dispute with B.

Mrs C wasn't happy with Santander's response, so she brought a complaint to our service. An investigator looked into Mrs C's complaint and recommended that Lloyds refund her outstanding loss. The investigator explained that the evidence showed Mrs C's funds weren't used for their intended purpose and were obtained by dishonest deception, so her claim is covered by the Contingent Reimbursement Model Code ('CRM Code'). Under the CRM Code, Mrs C is entitled a full refund as she had a reasonable basis for believing the investment was legitimate.

Santander say they aren't ready to provide their response to the investigator's opinion.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.13, says, if a respondent (in this case Santander) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to the investigator's opinion has expired, I'm going to proceed with issuing my 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.

In broad terms, the starting position in law is that Santander are 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).

### Is Mrs C entitled to a refund under the CRM Code?

Santander are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code does not apply to 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.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mrs C made her payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mrs C thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments and whether this was broadly in line with what Mrs C understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mrs C was making the payments to B as part of an investment. Based on the evidence that Mrs C had available at the time, there isn't anything to suggest she didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose B had in mind and whether it was in line with what Mrs C thought.

In reaching an answer on what purpose B had in mind, I've considered the wider circumstances surrounding B, and the linked companies involved in the investment. The key information is:

- Following their investigation, the Serious Fraud Office (SFO) said the defendants had provided false information to investors, "encouraging people to pay in whilst knowing that investments are not in reality backed up by the cars they had been promised".
- One of the linked companies (R) told the Financial Conduct Authority (FCA) that it owned 1,200 cars, but the number of charges registered at Companies House was 69. The cars purchased were supposed to be new cars, but DVLA checks showed that 55 cars appeared to be second-hand. The business model relied to a large extent on securing deep discounts on new vehicles and such discounts would not be available on second-hand cars. There were other discrepancies found between what R told the FCA and what the DVLA checks showed.

- Administrators of one of the linked companies found that it entered into 3,600 investment agreements with individuals, which should've had specific secured vehicles. But the company only had title to approximately 600 vehicles.
- There is no evidence that cars were purchased with Mrs C's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that Mrs C's funds weren't used for the intended purpose and that B obtained the funds through dishonest deception. So, I'm satisfied that Mrs C's payments meet the definition of an APP scam and are covered by the CRM Code.

The CRM Code says that Mrs C is entitled to a full refund unless Santander can establish that an exception to reimbursement applies.

Santander haven't provided any evidence or arguments that an exception to reimbursement applies, but for completeness I have considered this point.

#### Does an exception to reimbursement apply?

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that\*:

- 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 service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

*\* There are further exceptions outlined in the CRM Code, but they don't apply to this case.*

I'm satisfied that Mrs C had a reasonable basis for believing the investment was legitimate. I say this because the investment was referred by family members who had successfully invested before and received their returns. Also, B were an active company on Companies House, had positive reviews online and provided professional marketing material. I haven't seen any evidence that suggests there were warning signs that B wasn't offering a genuine investment when Mrs C made her payments in October 2020 and January 2021. So, Santander couldn't rely on basis for belief as an exception to reimbursement.

Santander haven't said that Mrs C ignored an effective warning and haven't evidenced that Mrs C was shown a warning when making her payments.

So, I can't fairly say Mrs C ignored an effective warning and I'm not satisfied that Santander can rely on this exception to reimbursement either.

As, I'm not satisfied that Santander can rely on an exception to reimbursement, Mrs C is entitled to a full refund of £42,000. Santander can deduct from that refund the returns that Mrs C received (which total £1,604.16), meaning the net refund should be £40,395.84.

#### The interest award

Prior to the SFO completing their investigation, Mrs C's payments wouldn't have been covered by the CRM Code.

However, on the conclusion of the SFO's investigation on 19 January 2024, Santander should've considered the available evidence and given Mrs C an answer under the CRM Code within 15 business days - as per R3 (1) (c) of the CRM Code.

This means interest should be calculated from 15 business days after 19 January 2024 (when the SFO investigation concluded) until the date of settlement. Interest is awarded at 8% simple per year.

It's possible that funds could be recovered at a later date through the administrators and Santander are entitled to ask Mrs C to sign an indemnity to cover this eventuality.

### Statutory body investigating

In response to the view Santander say they aren't in a position to respond. This may be because they are awaiting further information from other organisations or bodies for example UK Finance, although they haven't specifically said this.

Under the CRM Code Santander could defer giving an answer on a CRM complaint based on R3 (1)(c), which says: "if a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's (Santander's) decision, the Firm (Santander) may wait for the outcome of the investigation before making a decision".

However, in this case, Santander made a decision on Mrs C's claim under the CRM Code, saying it was a civil dispute. Santander didn't tell Mrs C in their Final Response letter that they wouldn't reach a decision, so they can't now rely on that clause.

And, based on all the evidence that I've seen, I'm satisfied that I can reach a decision that Mrs C's payments are covered by the CRM Code for the reasons explained above. I'm not persuaded I need to wait for any further updates from external parties or organisations, in this case, to reach my decision.

### **Putting things right**

To put things right I require Santander UK Plc to:

- Refund Mrs C £40,395.84 and
- Pay 8% simple interest per year on the refund, calculated from 15 business days after 19 January 2024 until the date of settlement.\*

\* If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs C how much it's taken off. It should also give Mrs C a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint against Santander UK Plc and require them to compensate Mrs C, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 17 December 2024.

Lisa Lowe  
**Ombudsman**