

The complaint

Mr L complains that Santander UK Plc ('Santander') won't refund the money he lost after falling victim to a scam.

What happened

In 2020, Mr L was looking for investment opportunities. He found an investment through a broker, investing with a company I'll refer to as F. Mr L made two payments totalling £9,000.

These payments were made to a separate limited company name, which I'll refer to as N (who were FCA regulated). N was a genuine intermediary firm which has since going into liquidation. From N the funds were sent on to F. Mr L says N was regulated through the Financial Conduct Authority (FCA) which gave him confidence.

When Mr L was unable to withdraw his investment, he raised a fraud claim with Santander. Santander declined to refund Mr L, saying that N was FCA regulated and it appeared to have gone into liquidation. F had also gone into liquidation. Due to this, Santander weren't satisfied that Mr L had fallen victim to a scam and believed Mr L had a private civil dispute with F.

Mr L wasn't happy with Santander's response, so he brought a complaint to our service. An investigator looked into Mr L's complaint but didn't uphold it. They explained that they didn't have enough information to say that Mr L had fallen victim to a scam, and that F going into liquidation didn't necessarily mean it was a scam.

Mr L disagreed with the investigator's opinion saying:

- He'd requested to withdraw his investment several times and been promised it would happen, but he hadn't received his money back.
- F is no longer in existence.
- He wasn't told at any point that F was in trouble.
- He was refunded in full, in relation to a prior scam that he'd fallen victim to, which he'd brought to our service against Santander - but wasn't in this case. Mr L thinks that the two scams could be linked.

As the case couldn't be resolved, it was passed to me to review.

Having reviewed his case, I intended to reach the same outcome as the investigator but for a slightly different reason. So, I wanted to explain my reasoning and give all parties a chance to provide any further evidence before I issue a final decision. So, I issued a provisional decision on 7 March 2024.

My provisional decision

In my provisional decision I said:

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

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 Mr L entitled a refund under the CRM Code

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

I'll start by saying that the involvement of a genuine intermediary, in this instance N, 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 the fraudster. Here I'm persuaded the funds were under the control of F at the point they arrived at the intermediary N.

Mr L does not appear to have a customer relationship with N. And I'm satisfied that N was acting on behalf of F and not Mr L. The money was out of the consumers control and so the payment(s) made here are capable of being covered by the provisions of the CRM Code.

But, 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 Mr L made the payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mr L thought this purpose was legitimate.
- The purpose the recipient had in mind at time of the payments and whether this was broadly in line with what Mr L 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.

In this case, Mr L was making the payment to F to invest in an ISA, and I can't see anything that would suggest that Mr L didn't think this was legitimate.

So, I've gone on to consider what purpose F had in mind and whether it was in line with what Mr L thought.

In reaching an answer on what purpose F had in mind, I've considered the wider circumstances surrounding F, its directors and any linked businesses. The key information to this case is:

- Mr L received two credits to his account, which appeared to be returns on his investment with F. These were received in December 2020 and July 2021 and were made in line with the six monthly returns Mr L was promised when he made his payments.
- F was an incorporated UK company which had been operating for 3 years prior to Mr L making his payments. It wasn't until November 2021, that the first notice for compulsory strike off was recorded, which was over a year after Mr L made his payments.
- There isn't sufficient evidence from any other sources that I've seen to date, that F wasn't operating legitimately at the time Mr L made his payments.
- A failed firm or investment, in and of itself, isn't sufficient to establish that the business or those operating it had a different purpose for the funds when they were obtained from the consumer.

Taking all of these points into consideration as a whole, I'm not satisfied that there is sufficient evidence to say Mr L's funds weren't used in the manner agreed by F or that the purpose F had in mind was different to Mr L's. On that basis, I'm not satisfied that I can safely conclude that Mr L's payments meet the definition of an APP scam as per the CRM Code, therefore I can't fairly ask Santander to refund him under the CRM Code.

Is there any other reason I can fairly ask Santander to refund Mr L

I've also thought about whether Santander could've prevented Mr L's loss when he made the payments as I would expect Santander to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. In situations where potential fraud is identified, I would expect Santander to intervene and attempt to prevent losses for the customer.

Having carefully considered the circumstances surrounding the payments that Mr L made, I'm not satisfied that intervention by Santander would've made a difference. I say this because the information that Mr L had at the time he made the payments, was unlikely to have concerned Santander that he might be the victim of a scam. This includes F being a registered UK company with no concerning information at Companies House (at that time), and the payments being made through N who were FCA regulated. I think it's unlikely that any questions asked by Santander would've suggested that Mr L may be at risk of financial harm.

Mr L has raised a point regarding a previous investment that he made which resulted in a loss, whereby he received a full refund after bringing a case against Santander to our service. In that case Santander made a proactive offer, which they've chosen not to do this time. Each case is assessed on its individual merits, so the outcome on another case won't dictate what the outcome will be on this case.

I have to reach a decision based on the individual circumstances surrounding the payments Mr L made to F. And, while I appreciate that F may've gone into liquidation and Mr L hasn't received the funds that he invested, that doesn't necessarily mean that I can fairly hold Santander liable for Mr L's loss.

I'm really sorry to disappoint Mr L, as I know that he has lost a significant amount of money and firmly believes that he was the victim of a scam. But I'm not satisfied that I can fairly ask Santander to refund him.

My provisional decision was that I didn't intend to uphold this complaint.

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.

Santander responded to my provisional decision saying they had nothing to add. Mr L responded, highlighting that he believes this investment has all the same hallmarks as the previous investment he made, which turned out to be a scam and which Santander refunded him for.

As neither party have provided any new evidence or information for me to consider, I don't see any reason to reach a different answer than I did in my provisional decision.

I appreciate that Mr L believes that this investment may be a scam, but based on the evidence, I'm not satisfied that I can safely conclude that the circumstances under which he made the payments meets the definition of an APP scam. I say this as I haven't seen evidence that proves that F took the money without the intention of providing the investment as agreed with Mr L.

And, based on the information that Mr L had available at the time he made the payments, I'm not satisfied that intervention by Santander would've uncovered the scam or prevented Mr L from making the payments.

It's possible that material new evidence may become available at a future date, which suggests that F did take Mr L's payments by using dishonest deception, for example, from the liquidator. If there is material new evidence, Mr L can ask Santander to reconsider his fraud claim and, if not satisfied with their response, can bring a new complaint to our service.

I'm sorry to disappoint Mr L, but based on the evidence we currently have, I can't fairly ask Santander to refund him.

My final decision

My final decision is that I don't uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 May 2024.

Lisa Lowe
Ombudsman