

The complaint

Mrs C complains that Santander UK Plc failed in its duty of care to her after her late husband lost a significant sum of money as a result of several scams.

What happened

On 13 March 2023 I issued my provisional decision on this complaint. I wanted to give both sides the opportunity to present any further evidence and arguments before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

What happened

Prior to Mrs C's husband, Mr C, passing away the two held a joint account. That account passed to Mrs C on Mr C's passing and this complaint has been brought by Mr and Mrs C's two children who have power of attorney over Mrs C.

Mr C was diagnosed with a serious illness in 2015, which meant he was prescribed a significant amount of medication. It is alleged that Mr C's behaviour changed significantly after his diagnosis - but particularly around 2017. He became involved in a series of what appear to be either high risk unregulated investments or outright scams. Mr C's family report that prior to his treatment he'd been a lifelong saver and very conservative with money.

I've set out below a brief description of each of the main beneficiaries and the amount Mr C sent to each:

L - seemingly a business offering unregulated loan notes. Mr C sent around £300,000 to this business, mostly by way of cheque.

W - seemingly another unregulated investment firm. Mr C says they were involved in mining. He sent over £200,000 to this business, mostly by way of cheque.

C - seemingly a business offering investment in a digital currency related to property. I understand those behind Care currently being prosecuted. Mr C sent around £50,000 to this business, mostly by way of faster payment.

UM - a business behind a trading account scam. Mr C sent around £40,000 to this business, mostly by way of credit card payments in early 2018

Others - Mr C sent a number of other payments by way of faster payment and seemingly mostly to businesses which claimed to be able to recover his earlier losses.

Between 2018 and 2020 there was significant interaction between Mr C and Santander. It spoke to him on a number of occasions because of concerns it had about payments he was, or had been, making. He also raised numerous complaints about the bank not letting him transact freely, including to the bank's CEO.

By August 2019 Santander was concerned enough to contact the police. Mrs C's representatives say that, following the police visit, both they and Mrs C became aware of the extent of the scams for the first time.

Our investigator produced a table of transactions and some key interactions between Mr C and Santander. I won't repeat that here but, as I'll refer back to certain events, I've set out a brief timeline below.

<i>Date</i>	<i>Event</i>
<i>November 2017</i>	<i>First transactions which have been highlighted by Mrs C's representatives.</i>
<i>March 2018</i>	<i>Santander speak to Mr C and discuss a £10,000 payment made on 27 November 2017 to a business seemingly connected with C, after it had received reports that other customers had paid the same account and reported falling victim to a scam. Mr C says the payment was not related to a scam and he's already received a profit - so hasn't suffered a loss.</i>
<i>Late May to early June 2018</i>	<i>Santander discuss two £25,000 payments: one to Land one to W. Both payments are eventually allowed to proceed.</i>
<i>16 August 2018</i>	<i>Santander speak to Mr C after concerns are raised about a payment of £60,000 he'd made to W on 13 January 2018. Mr C says he is sure W is not a scam as he's received returns from it and visited its offices. Santander confirm W is not FCA authorised and it appears to have been dissolved several years earlier.</i>
<i>February 2019</i>	<i>Mr C raised a fraud claim about credit card payments to UM. Santander ultimately rejected this claim and a subsequent complaint.</i>
<i>June 2019</i>	<i>Mr C raised a fraud claim about a transaction he'd made in order to try and recover funds from an earlier scam.</i>
<i>Early August 2019</i>	<i>Mr C is asked to attend a branch of Santander after concerns were raised about a payment he was attempting to make. Santander identify that Mr C is falling victim to a recovery scam and ask the police to visit him.</i>
<i>September 2019</i>	<i>Santander discuss the outcome of Mr C's recent fraud claim with him. Mr C says he is aware of the difference between regulated and unregulated businesses and suggests he is prepared to take some risks with his money.</i>

March 2020	Mr C again appears to be contacted by someone offering to recover his funds, but an attempted payment is stopped by the bank.
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Sadly, Mr C passed away in April 2020. His representatives complained to Santander both about its interactions with Mr C and what they felt was a failure in its duty of care towards Mrs C.

Santander issued its final response on 3 July 2020. It said that it had warned Mr C about the risk of scams on several occasions and it had tried to recover the money he sent, but with mixed success.

The matter was referred to our service and one of our investigators upheld the complaint in part. They thought that Santander took reasonable steps to warn Mr C that he was falling victim to scams and it couldn't be held responsible for the majority of the loss. However, they noted that a small number of payments took place after the Lending Standards Board Contingent Reimbursement Model Code ("CRM Code") came into force.

The CRM Code is a voluntary code which requires its signatory firms to refund in full customers who are, or were, vulnerable. The investigator thought that the medication Mr C was taking, as well as his illness, was likely to have made him unable to protect himself from scams of this nature and he was therefore vulnerable in the sense meant by the CRM Code. So, the investigator recommended that Santander refund those payments which took place after the CRM Code came into force - a total of just over £11,000. The investigator also recommended interest at 8% simple per annum from the date Santander declined to refund those transactions under the CRM Code.

Mrs C's representatives didn't accept the investigator's recommendation. In summary, they said:

- *Santander owed a duty of care to Mrs C. Had it informed her of its concerns, as it should have done, then much of the loss would have been prevented.*
- *Branch staff would have been aware of Mr C's condition - he was very talkative and well known at his local branch.*
- *Santander denied knowing about Mr C's condition - but the investigator found evidence that it had been informed of it in 2019.*
- *It could be proven that Mr C was suffering from side effects due to his medication.*
- *Santander ought to have withdrawn Mr C's banking facilities if he failed to take on board its advice and it was clear that other action, such as involving the police, was not stopping Mr C.*

Santander didn't provide any additional points in response to the investigator's recommendation. It did, however, respond to an earlier suggestion by our investigator that it should refund some of the transactions which took place. In summary, it said:

- *It questioned whether there was sufficient evidence that Mr C would have been suffering from side effects as a result of his medication.*
- *It pointed out that he has received regular income from some of the alleged scams.*
- *Mr C raised 24 complaints about the bank blocking transactions on his account, at least one of which was directed to the bank's CEO.*
- *At no point did Mr C appear to be vulnerable and family members were aware of the activity that was taking place.*

As no agreement could be reached, the case was 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.

I'm conscious that this complaint has been brought by Mrs C, but in order to address the complaint I'll need to consider whether Santander acted fairly in its dealings with the late Mr C, as well as whether it failed in a duty of care to Mrs C.

The starting position under the relevant regulations, the Payment Services Regulations 2017 ("PSR 2017") and, for transactions earlier than 13 January 2018, the Payment Services Regulations 2009 ("PSR 2009"), as well as under the terms and conditions of this account is that the account holder is responsible for transactions they've authorised themselves, even those carried out under deception. Cheques are not governed by the PSR 2009 or 2017, but the broad position is the same - the account holder is responsible for cheques they've issued themselves.

It's also not in dispute here that as the joint account holder, the late Mr C was entitled to transact on this account without the consent of the joint account holder.

Santander is also a signatory to the Lending Standards Board Contingent Reimbursement Model ("CRM Code"), a voluntary code which requires its signatories to reimburse victims of APP scams in all but a limited number of circumstances. However, the CRM Code only applies to certain kinds of transactions (it does not cover cheques) and only those which took place after it came into force on 28 May 2019.

However, even in the absence of the CRM Code, taking into account the law, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably:

- *Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- *Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which payment service providers are generally more familiar with than the average customer.*
- *In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

There's no dispute in this case that, at times, Santander expressed concern about transactions that Mr C was either making or had already made. There's also no dispute that in almost all cases Mr C was determined to proceed with the payments.

With that in mind, I've considered whether Santander:

- *Sufficiently questioned Mr C about the activity he was carrying out at appropriate points and, if it did not*
- *What might have happened had it done so; and*

- Whether, despite Mr C's willingness to go ahead, it ought to have taken any additional steps to try and prevent him from suffering from financial harm from fraud (such as closing his account and contacting Mrs C about its concerns); and
- Had it done so, whether it's more likely than not that any of the loss suffered would have been prevented.

It's first important to say that I've heard some (but by no means all) of Mr C's interactions with the bank between early 2018 and late 2019. I've also read and considered extensive records of other interactions. My overall impression of Mr C is of someone who was relatively financially sophisticated, knew his own mind and appeared confident in his decision making (even after a police visit and the acceptance that he'd fallen victim to a number of scams). And, though I accept that, over time, Mr C's illness and medication is likely to have had an impact on his decision making and left him less able to protect himself from scams, I don't think this would have been apparent to the bank until well into 2019 (though I accept it ought to have done, and did, have concerns about activity he was undertaking prior to that point).

Mrs C's representatives say that Santander owed Mrs C a duty of care and ought to have informed her about their concerns. The terms of the account do allow Santander to share information with the joint account holder under certain circumstances and it appears to have been happy to discuss the transactions with Mrs C (as it was in March 2018 - when Mrs C asked the bank to speak to Mr C instead). Broadly speaking, I agree that Santander should have contacted Mrs C if, having spoken to Mr C, it remained unsatisfied with his answers and concerned that he was falling victim to a scam.

I've taken all of the above into account when considering the interventions that did take place (as well as those which might've) and whether Santander should have gone further than it did, earlier than it did, by involving the police, Mrs C or withdrawing Mr C's banking facilities.

It's also important to state that, due to Mr C's passing and the fact that some of the payments in dispute don't appear to have been raised as scams during his lifetime, I have little information about them including, in most cases, their features and what enticed Mr C to become involved in them. Because of that I recognise that I have an incomplete picture of what happened, and I've had to base my findings on what I consider is more likely than not to have taken place. I'm happy to consider any further evidence that Mrs C's representatives might have about the circumstances surrounding the payments Mr C made.

I haven't seen Mr C's bank account statements prior to late 2017, but my impression is that he operated a busy account with a significant balance and number of payments coming in and going out.

Nevertheless, when, on 27 November 2017, Mr C sent a £10,000 payment to a business seemingly connected to C (though I haven't seen any conclusive evidence of this and the beneficiary appears to be linked to a company which is still operating), I think Santander should have recognised the risk of financial harm from fraud and intervened before allowing the payment to take place. As set out, Santander contacted Mr C about that payment in March 2018. This appears to have been after it had received information that other customers had reported having been victim to a scam after paying the same account. During this call Mr C was adamant that C was not a scam. He said that he'd visited its offices and had already made a profit.

I've thought about what Santander could have known about C in November 2017. I'm aware that, in 2019, Mr C provided a statement to the police about C's activities. Information available online also suggests that some of the operators of Care currently awaiting trial.

But it's less clear what would have been known to Santander back in late 2017 and early 2018. There's little online to suggest it would have been apparent to Santander then that C was operating fraudulently (bearing in mind that the information it received about C only came after Mr Chad made his initial payments). The scheme also seemed to be one that operated with a degree of legitimacy until investors lost money.

Taking those factors into account, had Santander intervened at the time Mr C made that first £10,000 payment in November 2017, I don't think had it asked Mr C questions about the payment it would have been particularly concerned that Mr C was at risk of falling victim to a scam and, given Mr C's belief that he wasn't, I don't think it would have been unreasonable to let the payment proceed after giving a warning about investment scams. And, the conversation that took place in March 2018 is evidence of what is more likely than not to have happened had it done so - Mr C would have chosen to proceed regardless. Mr C did make one further payment to C after the March 2018 conversation, but it wasn't to the same payee and was, compared to the other activity on Mr C's account, for a relatively modest amount - so I don't think Santander had any significant reason to be concerned about that payment. And, given that in March 2018 Mr C said that he'd suffered no loss as a result of the November 2017 payment, I can't see that there was any reason for it to take further steps at that point.

In relation to W, there's very little information available online about it and I'm unable to confirm that W was definitely a scam (though it seems more likely than not it was). Again, I think Santander should have intervened when Mr C attempted to make a £60,000 payment to it in January 2018, rather than after the event - in August 2018 (when it, again, had received information that other customers had lost money as a result of paying W). Had Santander intervened in January 2018, it seems likely that Mr C would have been just as confident about the legitimacy of W as he was in August 2018 (when he said he'd visited W's offices). And, Santander would not have been in the same position to provide such a strong warning as it had not yet discovered that there had been other reported victims of W. Given how little information I have about W, it's unclear whether it had many of the common features of an investment scam, so I don't think it would have been unreasonable for Santander to be reassured by what Mr C said.

So, based on the information it had at the time and the risk presented, I think Santander would have been reasonable to warn Mr C that the investment wasn't regulated (though it's not clear it would have needed to be) and that such an investment was generally likely to be of higher risk of being fraudulent (though it had no obligation to warn Mr C about high risk investments). But, as we know from the conversation in August 2018, this wouldn't have been likely to deter Mr C and, based on what it knew at the time and for the reasons I've explained, I don't think Santander ought fairly or reasonably to have refused the January 2018 payment altogether.

I've also considered whether Santander should have taken any additional steps after it spoke to Mr C in August 2018. My impression is that it remained concerned following this conversation and, by this point, it had raised retrospective concerns about two separate payments after receiving information that linked the recipient accounts to scams.

I think it would have been reasonable for Santander to speak to Mrs C at this point both to confirm whether she knew about the activity and to let her know about its concerns. At this point, Mr C did seem to be refusing to accept the possibility he was being scammed despite the report the bank had received. But had it informed Mrs C about its concerns then, I'm not persuaded that this would have made a difference or prevented any loss.

This is because it's not clear to me that Mrs C would have been completely unaware of the activity that was taking place as statements were sent out and, as already mentioned, Santander called about the transactions on at least one occasion. Of course, knowing the activity was taking place and knowing that Santander had specific concerns are not the same thing. But, I note that Mr C carried on making payments even after August 2019 when, I understand, both Mrs C and the wider family were aware of the bank's concerns following a visit from the police (and the scams Mr C fell victim to were generally less plausible). And, it's not clear to me that Mr C ever accepted that the payments to W were part of a scam.

Given the apparent higher degree of sophistication in the scams at this point (compared to those in 2019) and Mr C's confidence about their legitimacy, I think it's likely that, had Santander contacted Mrs C about its concerns, Mr C would have been able to persuade Mrs C of the legitimacy of the transactions

In January 2019, £33,000 of the £60,000 previously sent to W was returned to Santander, but Mr C appears to have subsequently sent this money back to W by way of cheque. I've thought about whether Santander ought to have picked up on the risk to Mr C here, but because the payment was made by cheque, Santander would not have been aware of the named recipient unless they manually reviewed the transaction. Given Mr C was, at that time, regularly making significant payments by cheque, I don't think that payment would have stood out, so I don't find it surprising that the fact that cheque was being paid to W didn't come to Santander's attention.

Turning to L, Santander did, as I would expect it to, intervene on the first faster payment made to L in late May 2018. L appears to have been a business offering high-risk unregulated loan notes. This kind of investment did not require authorisation from the Financial Conduct Authority. Information available online suggests that there was scepticism about the returns promised by L, but it appears to have identifiable directors and operated openly. It also paid Mr C reasonably significant returns for many months after he made payments to it. There isn't enough information available about L to confirm whether it was a scam or just a high-risk unregulated investment and it follows that there certainly would not have been at the time. Santander could not have given investment advice and there is no obligation on it to protect customers from a bad bargain. It follows that I don't think Santander would have been able to confirm whether L was a scam or not and I'd only expect it to give a general warning about the risk of various scams, particularly investment scams, which it appears to have done. As L doesn't appear to have had the key features of a typical investment scam, I can see why such warnings didn't resonate with Mr C.

I've found little about UM online and I haven't seen any significant testimony from Mr C about his interactions with it. But I'm aware that businesses offering the kind of high-risk trading it appears to have offered, were often short-lived and frequently changed name. I'm also aware that the marketing, distribution, and sale to consumers of certain high-risk financial products was banned in July 2018 (after Mr C made his payments). It's not clear that Santander did intervene before any of these payments and given the number of significantly sized payments Mr C was making at that time I'm not necessarily persuaded it ought to have done. But had it done so, I think that awareness of this kind of scam was generally lower at the time and it would have been harder for Santander to identify the key features of such a scam that are generally better known now. There also doesn't appear to have been a warning about UM issued by the FCA at the time. So, I think Santander would have only been in a position to give a similar warning as it could have done in relation to W, C and L - that the investment was unregulated, high-risk and might be a scam. I don't think Mr C would have reacted any differently to such a warning than he did in relation to the other

businesses mentioned and, given Mr C's general belief in the legitimacy of his investments and his awareness of the risk of dealing with unregulated businesses, I'm not persuaded that

Mr C would have been particularly forthcoming about any of the aspects of UM that might have concerned the bank. It's also important to note that Mr C raised a complaint about UM in early 2019 - arguing that Santander should have refunded him through the chargeback scheme or under Section 75 of the Consumer Credit Act 1974. As that complaint wasn't referred to our service at the time, I'm unable to consider those specific points.

Though I think Santander might have taken the additional step of contacting Mrs C in August 2018, I'm minded to draw a broad distinction between the payments I've discussed above and those which were sent to other parties, mostly after June 2019. As I've set out, Mr C had become involved in a number of dubious investment schemes, but ones which mostly likely operated with a high degree of sophistication and, in some cases, some degree of legitimacy. Faced with a customer who wasn't simply determined to go ahead but could (for the most part) reassure the bank that he understood the risk and had carried out necessary checks, a general lack of information to confirm that the recipients were scams and a high level of sophistication, I think that it was reasonable for it to provide warnings about investment scams and, in relation to the August 2018 conversation, inform Mrs C of its concerns. It did warn Mr C (highlighting, for example, that he'd be at much greater risk by investing in unauthorised businesses) albeit not for every recipient and not always at the time I would have recommended, but this did not deter Mr C. Although it did not contact Mrs C, for the reasons I've explained, I'm not persuaded that this would have prevented any loss.

Overall, up to this point, I don't think, prior to when Mr C began to report he'd been the victim of scams in 2019, the bank reasonably needed to take any of the additional steps it took, or threatened to take, later (other than contacting Mrs C).

But, by June 2019 Mr C seems to have accepted that he'd fallen victim to several scams. However, he went on to make a number of other payments in July 2019 to businesses which promised to be able to recover his money. This culminated in Mr C being asked to attend the branch after concerns were raised about the (rather evasive) reasons he gave for making a payment. In the branch he said the payment was for his son, but it transpired that Mr C was actually attempting to pay another recovery scam. This incident is what led to the police visiting Mr C's home and, according to his representatives, them becoming aware of the issue for the first time.

At this point I think it was, and should have been, apparent to Santander that it would need to involve the police in order to try and protect Mr C because (unlike previous payments), he was misleading the bank, it was clear that he was falling for a relatively unsophisticated scam and, despite what had happened up to that point, was not prepared to listen to its advice. So, I think that put Santander in a significantly different position than in relation to the interventions I described earlier and it was right for it to involve the police and threaten to withdraw Mr C's banking facilities at this point.

But, I'm not persuaded that withdrawing Mr C's banking facilities (either at this point or earlier) would have prevented the loss to Mr and Mrs C. Mr C suggested as late as September 2019 that he was prepared to open a new account should that happen and, even taking into account his illness, that doesn't appear to have been beyond his ability.

Even the involvement of the police does not appear to have deterred Mr C - he went on to make payments of a similar nature later in August 2019. I accept that Mr C's illness and medication may have been having a more significant impact on him by this point. It's possible, though I don't think very likely, that an earlier intervention by the police would have made a difference. But, in any case, I've explained why I don't think that was warranted until August 2019.

Mr C's representatives also argue that his condition would have been well-known to branch staff because he was talkative and openly shared information about this. I don't doubt that's the case, but I think this has little bearing on the outcome of this case. First, I'd distinguish between what might be shared as part of general conversation and what the bank might reasonably be expected to record on a customer's profile (with their permission) and second, and more importantly, as I've already set out Mr C did not give the impression of someone who was in any way unable to manage his finances (at least not during the majority of the period in question). So, I don't think the relevance of this information would have been apparent to branch staff who, in fact, processed very few of the payments Mr C made. While Mr C did tell Santander about his diagnosis in September 2019, this is, for reasons I'll go onto explain, after the point I've decided he should be reimbursed for the payments covered by the CRM Code, so it has no bearing on the outcome of this complaint.

Should Santander refund the transactions covered by the CRM Code?

As set out, the CRM Code requires its signatories to refund victims of APP scams in all but a limited number of circumstances. If a customer is vulnerable under the meaning set out in the CRM Code then they should be reimbursed by a firm regardless of whether any other exception to reimbursement might apply.

Under the CRM Code:

A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered.

It's important to state that the test is not whether Santander were aware of Mr C's vulnerability and neither is it whether Mr C gave the outward impression of being vulnerable. Instead, it is, as far as possible, an objective test of Mr C's vulnerability.

I know little of Mr C's lifestyle before the scams started taking place. But, it does seem that his attitude to risk significantly changed in the latter years of his life. In relation to some of the scams that took place, it's likely that once Mr C had made some sort of initial contact, his details would have been passed onto other fraudsters - either offering similar products or promising to recover previously lost sums. So, it's not easy to decide whether, in those cases, Mr C became more inclined to take risks or was simply exposed to a significant number of sophisticated and persuasive fraudsters. In other cases, it seems likely that Mr C sought out the opportunity himself and was looking for higher risk investments.

Certainly, by September 2019, he was expressing quite a cavalier attitude towards risk - seemingly willing to suffer substantial losses to fraudsters in exchange for the possibility of making money. This is significantly at odds with the way in which Mr C's children say he had previously managed his finances.

I've considered the medical evidence provided carefully and I agree with the investigator that there is a strong likelihood that Mr C was suffering side effects from the medication he was taking. I've also taken into account Mr C's overall circumstances - he was suffering from a terminal illness during the entire period the scams took place.

And, by mid-2019 and early 2020, Mr C was showing himself to be increasingly unable to resist attempts by fraudsters to extract more money from him - even after the police had visited, his family was aware of the situation and he'd been told repeatedly that he was falling victim to scams. He was also prepared to mislead the bank about the purpose of at least one payment he attempted to make (something that doesn't appear to have happened

previously). I think it's fair to say that the sophistication of the scams had declined by this point - seemingly just asking Mr C for money in order to recover previous losses.

Taking all of the above into account, it's apparent to me that Mr C was increasingly unable to protect himself from APP scams as time went on and I think that was certainly the case by the time the CRM Code came into force on 28 May 2019. Therefore, Santander ought to refund the faster payments which took place after the introduction of the CRM Code.

I acknowledge that Mrs C's representatives include an additional payment as being related to a scam (a payment of £1,450 on 27 August 2019) that I can't see was included in the original claim. Unless Santander have further evidence that it was not related to the scam, I'm minded to include this as part of my intended recommendation .

Regarding interest, though Mr and Mrs C's account had a significant balance, the money does appear to have been in their current account and it's not clear what it would have been used for had it been returned at the time. Considering the circumstances overall, I don't think interest at 8% simple per annum is unreasonable. Interest should be paid from the date Santander declined to refund these payments under the CRM Code.

Turning to the recovery of funds, I'm conscious that many of the payments weren't reported to Santander as fraud until years after they took place (and some only after a complaint was referred to our service). But I do note that Santander, over the period, was able to recover some money and other funds were returned to it. From the evidence I've seen, it made reasonable efforts to recover money where possible and when fraud was reported to it.

Finally, I've considered whether any compensation should be paid by Santander. Though I'm very sympathetic towards Mrs C and her circumstances and I'm sure that the experience of discovering that her late husband had been defrauded to such an extent would have been very upsetting, I think this distress is as a result of the actions of the fraudsters and not, for the reasons I've explained, a failing on the part of Santander. I do think Santander ought to have reviewed Mr C's claim under the CRM differently, but given the number of payments included in that claim compared to the overall loss, I don't think this is likely to have had a significant impact on the distress caused to Mrs C.

Neither do I make any award for the actions of Santander in relation to the late Mr C. As I've set out, I think it broadly took appropriate steps at appropriate times to try and protect Mr C. It did, on occasion, pay Mr C some small sums to recognise its service failings in relation to complaints he'd raised. But those complaints do not, and cannot, form part of this one. So, I make no award of compensation.

Overall, I appreciate how upsetting it must have been for Mrs C to find out that her husband had lost such significant sums of money at an already very difficult time. But I think Santander generally took reasonable measures to protect him based on the information it had available at the time. Where it could have gone further (for example in August 2018) I'm not persuaded that this would have prevented any of the loss to Mr and Mrs C. And, when there were increasing reasons for it to become concerned it took reasonable additional steps - such as involving the police, but even after it did this (and both Mrs C and other family members were aware of what was happening) this was not sufficient to stop Mr C from going ahead with some payments.

My provisional decision

I intend to uphold in part this complaint about Santander UK Pie and instruct it to pay Mrs C:

- £11,211

- *8% simple interest per annum on that amount from the date it declined the claim under the CRM Code to the date of settlement.*

Santander said it agreed with my provisional decision. Mrs C's representatives did not. They made a number of comments on, and annotations to, my provisional decision. I haven't set out every one of those comments below, but instead I've summarised what I think are the main points.

- It was unclear what further information could be provided in support of the claim. It was particularly difficult for them to provide further evidence about the scam companies as Mr C was very secretive. It also wasn't clear what evidence would assist my investigation and the investigator hadn't suggested any further evidence was required. In addition, if this case was heard in a court of law, a judge would require all of the evidence before reaching a decision.
- It wasn't clear how thorough Santander's investigation was, whether I was happy with it or what it had previously agreed to refund. They questioned why I hadn't heard all interactions between Mr C and the bank as those interactions might contain crucial evidence.
- It was clear that our service had the power to make awards for events that took place before the introduction of the CRM Code, so it was unclear why I hadn't made such an award.
- They provided links to a case study on our website and an article which, they said, supported the idea that Mrs C should be refunded.
- It wasn't clear what I meant by saying Santander should have reviewed Mr C's claim under the CRM Code differently.
- They asked whether I think the bank should be obligated to warn customers about high risk investments.
- They questioned what safeguards Santander had in place for vulnerable customers at the time and highlighted a relatively recent fine imposed on the bank as evidence of malpractice.
- They made a number of comments about the timing of the interventions and whether payments should have been allowed to take place. Many of these comments are in the 'what happened' section of my provisional decision and, I think, are addressed later in that provisional decision.
- They and the wider family were not aware of the extent of the scams until Mr C passed away in April 2020 and they did not have access to his bank accounts. The bank was in a far stronger position to discuss the matter with him and take drastic action.
- They disagreed with my finding that Santander informing Mrs C of the concerns it had would not have prevented some of the loss. She would have informed them and they would have been able to confront Mr C about the activity.
- They questioned what the conclusion of the police investigation was and whether a report had been seen.
- The bank should have been aware of all of the features of a scam – including atypical or less common features, it was typical for scams to pay dividends to customers and it was wrong for the bank to presume an investment was legitimate because of this.
- The £33,000 cheque payment could and should have been picked up on by Santander, particularly given that payments by cheque are now relatively unusual.
- Overall Mr C was acting irrationally and completely out of character and Santander didn't go far, or do, enough to prevent the loss to Mr and Mrs C.

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.

I appreciate it is difficult for Mrs C's representatives to provide significant further new evidence. But my provisional decision was also intended to give them the opportunity to understand my position and present any further arguments in advance of a final decision.

It is inevitable that, in a case like this (and many other considered by our service), the evidence won't be complete. That's particularly the case here, given the passage of time and the passing of Mr C, but it's not uncommon, given the relatively informal nature of our service. While, ideally, all evidence would be available, I'm satisfied that the evidence I've seen is sufficient to make a final decision.

I have to make that decision on the balance of probabilities – what I think is more likely than not to have taken place. It's inevitable and understandable that there won't always be agreement between the parties about that. And, that's a decision I need to make based on the circumstances of this case (not any wider evidence of malpractice).

It's important to set out that we can and do hold banks responsible for loss to authorised scams outside of (and before the introduction of) the CRM Code. In order to do so, we generally must conclude that the bank failed in its duty of care to the customer (described in the paragraphs on page 4 above) and that its failure caused a loss to the customer. In doing so, we will take into account whether the customer in question is vulnerable. In essence we're considering whether a business was or ought to have been on notice that a customer was at risk of financial harm from fraud and, if it was, whether it took sufficient steps to try and prevent that loss. As mentioned, the test is not whether the bank ought to have warned Mr C about a high-risk investment. Giving investment advice is a regulated activity, so not only are bank staff monitoring payments not under any obligation to give investment advice, they are not allowed to provide it.

Under the CRM Code, on the other hand, the bank is responsible for loss to APP fraud, unless it can show that one of the exceptions to reimbursement applies (or, like in this case, that the customer wasn't vulnerable). As already set out, the CRM only applies to transactions that took place after it was introduced (on 28 May 2019). In my provisional decision I set out that Santander should have reviewed Mr C's claim under the CRM Code differently by refunding the transactions he made that were covered by the CRM due to his vulnerability. And, to be clear, our award limits only dictate the maximum amount we can award – whether events took place before or after the introduction of the CRM Code.

As it was undisputed that at various points Santander did have significant concerns about Mr C's activity, much of the provisional decision dealt with the question of whether its interventions were sufficient and whether better or different interventions would have prevented Mr C's loss. I accepted that, by August 2018, the bank could and should have gone further by speaking to Mrs C, but I didn't think this would have prevented any further loss.

Mrs C's representatives disagree. They accept that Mrs C alone wouldn't have been able to dissuade Mr C, but she would have informed them and they would have been able to prevent Mr C from going ahead.

I'm afraid that I continue to disagree on this point. As noted, Mr C made some payments even after the police visited. That visit was a welfare check and it's unlikely there would have been any sort of formal investigation. We do not know exactly what was said, but we know

that Mrs C and the rest of the family became aware of the visit and they were sufficiently concerned to bring Mr C to the branch to discuss the activity that had been taking place.

Had Santander advised Mrs C of its concerns in August 2018, I would have expected it to say that it had raised concerns about fraudulent transactions on a number of occasions but that Mr C was still determined to go ahead (those concerns related to W and C, but not L). Had Mrs C passed on that information to Mrs C's representatives (which is by no means certain, given that this was a quite different situation to the police visiting her home), it doesn't appear to me that they would be in a significantly different position than they were later when the police visited. Even that action didn't prevent further transactions or, seemingly, bring the full fraud to light. So, I don't think Santander raising their concerns with Mrs C in August 2018 would have prevented further loss.

I agree that the bank ought to be aware that, in some cases, investment scams return some money to customers, sometimes even regularly. But, it is inevitable that the more closely a scam resembles a legitimate investment, the more difficult it will be for the bank to identify one from the other. Scams that operate with a high degree of sophistication can go undetected for years and are sometimes only revealed when dividends stop. In my experience, scams that involve regular payments back to the victim over a significant period of time are not particularly common and, by their nature, very hard to identify. There's no better evidence for that than the fact I'm still unable to establish whether all of the recipients were investment scams.

I don't agree that the involvement of the police demonstrates a failure by Santander, instead it shows that they were prepared to take additional steps to try and protect Mr C from fraud. I've already set out why I thought it was reasonable to take that step then (and not before). There's little I can add to what I've already said on the wider question of whether Santander did enough to try and prevent financial harm from fraud. I've already set out in some detail the actions it did take, the actions it could have taken and what this means for the complaint.

Finally, in relation to the £33,000 cheque, I accept it could have been stopped, but, against a backdrop of the other account activity, I don't think Santander made a mistake by failing to stop it.

Overall, while I again extend my sympathies to Mrs C and her family, for the reasons I've explained, my final decision remains the same as set out in my provisional decision.

My final decision

I uphold in part this complaint about Santander UK Plc and instruct it to pay Mrs C:

- £11,211
- 8% simple interest per annum on that amount from the date it declined the claim under the CRM Code to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 31 May 2023.

Rich Drury
Ombudsman