

## The complaint

Mr T is unhappy that Santander UK Plc has decided not to refund him after he was the victim of an authorised push payment (APP) scam.

## What happened

Mr T said he was looking to invest after receiving some inheritance money. Mr T says he was introduced to an investment by someone he had bought a car from – I'll refer to them as S. Mr T says S showed him a spreadsheet on his phone which detailed his investment and returns with V. Mr T says S showed that he achieved a return of 10% per month and so S put Mr T in touch with V.

Mr T was in touch with V and his colleague K in August 2020. Mr T says he spoke to K and V on speaker, in his car with his eldest son present. K and V spoke about how the opportunity worked. He didn't meet either K or V in person. He received a contract from V and communications were largely via WhatsApp.

Mr T understood that V specialised in forex trading. Mr T says he was attracted to the investment because of the *"incredible return on the investment of 10% per month"* which could allow him to pay off his mortgage in three years. He understood he could make a withdrawal on his investment with 30 days' notice.

When asked what he thought about the returns Mr T said *"Although a guaranteed return in a contract term may appear unusual, the term being stated in writing in a contract means there will be legal recourse if it is not met, so this did not cause concern, but in fact gave comfort to the reader"*.

*Mr T went on to say "a barrister and fellow investor with T looked at the contract and didn't see any red flags"*.

Mr T said he had no experience of investing in currency and he did as much due diligence as he could. However, Mr T, in his capacity as a director of a Ltd company, does have general investment experience. He has said the investments made by the Ltd company are all sanctioned by the directors and are a mix of low-risk and high-risk investments, varying from property developments to Crypto currencies.

And Mr T invested funds through a Ltd company, of which he is the director and has brought separate complaints regarding those funds.

This complaint relates to a £7,500 payment made from his Santander personal account. The contract with V is in his son's name. Mr T says the investment is his son's and he has no investing experience at all and has learning difficulties. Mr T or his son didn't receive any returns.

After investing Mr T says he would receive screen shots of the trades V had made, followed by an excel spreadsheet showing the value of his investment, on a monthly basis.

In May 2021 Mr T says he gave notice to withdraw from his investment. He says after months of exchanges with V he was not able to access his funds.

Mr T raised a scam claim with his bank. Santander said it was aware that V was the subject of an active law enforcement investigation. And as that was on-going it prevented the bank from being able to respond to the claim at the time.

Unhappy with this outcome Mr T brought his complaint to our service.

One of our investigators looked into the complaint and concluded Santander should refund Mr T for 50% of his losses plus 8% from the date of the debit to the date of settlement. In summary his findings said this claim was covered by the CRM code. And Santander did not meet the firms' standards in providing an effective warning. He said the warning didn't explain any potential consequences for sending money to a fraudulent investment, it didn't go into enough details about the types of checks that could be made to verify if an investment is genuine.

Mr T didn't have a reasonable basis of belief when deciding to invest with V. He said this because:

- Mr T had knowledge of investing, in his capacity as a Ltd company director and that knowledge would have played a role in his decision to invest in his personal capacity or on behalf of his son. He ought to have picked up on the red flags that were prevalent when deciding to invest with V.
- The way in which Mr T was introduced to V was not an indication of its legitimacy. The people who vouched for V were not experienced investors.
- The contract provided by V says the 10% monthly return was guaranteed and would be made up by V's personal funds if not met through trading. He said Mr T ought to have been concerned about how reasonably believable it was that his capital wasn't at risk at all and that the profits seemed too good to be true.

Mr T did not accept the investigators recommendations. He said:

- It wasn't fair to use a statement he'd provided on a different complaint regarding his investment experience. This was his son's investment and he had no investment experience.
- Another investor with V has had a full refund recommended by our service. And the facts are the same in this case.
- All previous investments Mr T had made had risk but the asset always increased in value overtime and V provided a written contract so there was no red flag.
- He's never had a contract in writing that was not adhered to as there are legal consequences.
- Other consumers who said they knew someone who got returns, was sufficient, to say they had a reasonable basis of belief and resulted in them receiving a full refund.

Santander responded to say it had not made a decision regarding Mr T's claim. It said it was unable to determine if this was a scam or a case of a failed investment. There is an on-going police investigation and the decision for this claim under the CRM code should be put on hold until there is an indication from the police about how the matter will be treated.

As the complaint couldn't be resolved it has been passed to me.

## 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.

Having done so, I agree with the investigators' findings for largely the same reasons. I'll explain why.

### *Santander's request for the case to be placed on hold*

In order for the consumer to have been the victim of an APP scam the consumer must have been deceived about the very purpose for which their payment has been procured. '*fraud*' in this instance would mean that there had been a dishonestly made false representation, with the intention of making a gain for V or to cause a loss to Mr T.

And for there to be '*fraudulent purposes*' (as opposed to legitimate purposes) it would require that test for fraud to be met in relation to the *purposes* for which the payment was procured. That must have been at the time the payment transaction occurred, or earlier. It does not follow that fraud at a later date can engage the CRM Code's definition of an APP scam.

Neither would fraud which doesn't speak to the *purpose* of the payment. I take it to follow that there may be situations where false representations were made which could amount to fraud under the Fraud Act, but which don't have the effect of the payment falling within the scope of the definition of an APP Scam set out under the CRM Code.

I don't have the power to conduct a criminal investigation into V. Part of what is required here is to establish the intent and state of mind of the person(s) accused of this fraud about the purpose of Mr T's payment.

When considering the evidence produced in support of Mr T's claim of an APP scam, I'm required to reach my findings on a balance of probabilities rather than to the criminal standard. But given the serious nature of the allegations involved I consider that this must involve convincing evidence to lead me to find it more likely than not the underlying purpose of the payment transaction was a fraudulent purpose.

I have not seen any evidence at all to suggest any trading took place with the funds that Mr T transferred to V's account. We've also seen a number of receiving account statements and there's no activity that would suggest V was operating or carrying out the activities as he described, or the consumers funds were fundamentally or wholly being utilised, as agreed between V and the consumers. So, on balance I'm satisfied there is enough persuasive evidence that Mr T, as well as others, have been the victims of an APP scam.

Santander has said there is an on-going Police investigation and I assume is attempting to rely on R3(1)(c) of the CRM code applies. R3(1)(c) says:

*If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision.*

Santander hasn't provided an explanation as to why awaiting the outcome of the police or other statutory body investigation *might reasonably inform* an outcome under the CRM code. A Police investigation and decision to charge will be based on a criminal burden of proof. That may well take many months or years to decide or may not happen at all. In this case

I'm deciding if Santander, under the voluntary CRM code, is liable to refund the consumer where it's more likely than not, that the consumer was the victim of an APP scam. I appreciate a Police investigation may reveal more detail but as I'm of the opinion that it is not in question that this was a scam, then that isn't necessary in this particular instance.

A criminal prosecution is not necessary to determine if something is an APP scam under the code. I'm satisfied on balance that this was more likely than not a scam. I've seen no evidence that V intended to use the consumers funds as they agreed between them. And Santander has not provided any evidence to contradict this either. As such I'm satisfied this meets the definition of an APP scam under the CRM code.

*Has Santander met the firms' standards under the CRM code?*

Like the investigator, I'm satisfied that Santander ought to have identified Mr T's payment represented an APP scam risk, and provided a tailored risk-based warning.

Santander hasn't responded to the investigators comments on the warning not being effective, so I assume it does not disagree with the findings he made on this.

Whilst Santander provided a warning, I agree this doesn't meet the firms' standards under the CRM code as being an effective warning, so that Santander can rely on this as an exception to reimbursement.

As such I'm satisfied that Santander is liable for at least 50% of Mr T's losses.

*Did Mr T have a reasonable basis of belief when making these payments?*

I haven't seen any persuasive evidence from Mr T that he thought this was a legitimate investment. He appears to have decided to invest based on very little information.

- Mr T says someone who he bought a car from - S - had invested with V and received returns but has provided no evidence to support this. Either that he interacted with S or that S did in fact receive funds (and not just told he'd made a profit from the monthly spreadsheet statements that we know most consumers received). Or that S's returns were received before Mr T decided to invest.
- Mr T has provided a basic agreement between him and V which says he will give V money and in return V will invest his funds in forex and provide the profits as described in the background of this complaint. And like the investigator I agree that the high guaranteed returns, with no risk to his capital should have been a red flag for Mr T.
- The payments were being made to V's personal account rather than to a business or Ltd company account. It's not clear how Mr T thought he would receive his returns or if they were held in any sort of client account – I can't see that he asked these questions or thought about this when sending this money to V.
- If Mr T had made enquiries with V he would have found that in order to carry on the activity that T claimed to be doing, trading or investing *on behalf of others*, he required FCA authorisation, which he didn't have.
- V doesn't appear to have provided detail about how he would be able to generate such lucrative profits without any risk. And Mr T hasn't provided evidence or explained that he asked about this either.
- And although Mr T has said he received the monthly statements showing his profits, these were very basic spreadsheets which don't provide any indication of what is

happening to generate those “returns”. In any event this wouldn’t have had any bearing on Mr T’s initial decision to invest as these would have only been sent to him after he began to invest. But if he saw this spreadsheet from S, at the point he was deciding to invest, and they were an influencing factor, then I’m not sure what it was about these spreadsheets that Mr T found persuasive or that made him think the investment was legitimate, given their sparse detail and basic format.

- Mr T says he was also provided with screenshots of the trades placed by V. But I don’t think this has any bearing on his reasonable basis of belief when he made the initial payments to V – as these would have been received after Mr T had begun investing with V, or at least after his initial payment.
- I’m not persuaded that Mr T ought to have believed what he was being told simply because it was set out in a contract. Scammers regularly provide contracts to consumers. Although I appreciate Mr T says didn’t have any experience of a contract not being fulfilled, this didn’t mean that an any term in a contract ought to reasonably be considered as legitimate. If a term is too good to be true, even if its in a contract, it should still have given Mr T cause for concern and considered if what he was investing in was truly legitimate.
- Mr T says a barrister and fellow investor reviewed the contract and also had no concerns. Mr T has provided no evidence to support this statement and even so I refer to my point made above which is that any term can be written down in a contract but that doesn’t make it true.
- I agree with the investigator. I can’t disassociate Mr T’s knowledge as a director, when deciding to invest personally (or on behalf of or with his son) he won’t have put that knowledge, skill and care to one side when making the decision to invest. And although Mr T says it was his son’s investment its clear this was driven by his experience with V and what he believed to be a good investment of this money. So Mr T’s knowledge and experience is a very relevant factor when deciding the outcome of this complaint.
- Each case is decided on its own merits. And importantly a consumers’ reasonable basis of belief, is subjective. Factors regarding personal knowledge and experience play a role in deciding reasonable basis of belief under the CRM code. So, the individual facts will have an impact here. Even if multiple consumers fell for the same scam and saw similar or even the same information before deciding to invest, this doesn’t mean the claim will result in the same outcome.

Whilst I appreciate Mr T wasn’t the only consumer who fell for this scam, I haven’t seen any persuasive evidence that Mr T reasonably thought this was a legitimate opportunity given all the red flags that it presented.

I agree that he should be held partly liable for his losses and agree that the refund amount here due from Santander is limited to 50% plus 8% interest.

### **Putting things right**

I now direct Santander to pay Mr T 50% of his losses from the second payment onwards. Plus pay 8% simple interest from the date the claim was declined to the date of settlement.

### **My final decision**

I uphold Mr and Mrs T’s complaint in part against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 21 March 2025.

Sophia Smith  
**Ombudsman**