

The complaint

Mrs W complains that Santander UK Plc ('Santander') won't refund the money she lost after falling victim to a scam.

What happened

Mrs W's complaint was brought to our service by a professional representative. As the account is in Mrs W's name, I'll refer to Mrs W throughout this decision.

In August 2023, Mrs W received an email advertising a fixed rate bond for a bank I'll refer to as C. The email appeared to come from an online comparison website in conjunction with C and Mrs W says she is a member of both companies.

Mrs W was interested in the fixed rate bond, so she clicked a link in the email and provided her contact information. Mrs W was called by someone who said they worked for F, a large well-known bank. They told Mrs W they had a two year fixed bond with a return of 11% per annum. They sent Mrs W an application form (with F's details and logo), terms and conditions (with F's details and logo) and details of the bond. Mrs W was told that if she wanted to apply for the bond, she would need to provide photographic ID and return the application form.

Unfortunately, this was a scam. They had cloned F and were using their reputation to entice customers to invest.

At the time this was happening, Mrs W's husband was suffering serious ill health which required daily hospital appointments. Mrs W told the scammer about this and asked them not to contact her in the afternoons.

The day after receiving the documentation on 3 August 2023, Mrs W received two calls urging her to submit her application, so she completed the application form and returned it.

Mrs W continued to receive calls from the scammer over the next couple of days. On 7 August Mrs W had three missed calls, and when she called the scammer back, they pressured her into paying a 10% deposit in order to secure the bond. Mrs W made a payment of £4,000 to I (a separate company name).

Mrs W continued to receive calls pushing her to pay the balance of the fixed bond. So, on 9 August 2023, Mrs W tried to pay the balance of £36,000. However, there was a daily transfer limit, so she sent £19,000 to I (same payee as the first payment).

Mrs W received follow up calls pushing her to make the final payment, which she did on 10 August 2023, for £17,000 to I (same payee as previous payments).

Shortly after making the last payment Mrs W tried to contact the scammer and was unable to get hold of them by phone, so she sent an email. However, the email bounced back to her, and Mrs W realised she was the victim of a scam.

Mrs W immediately contacted Santander to raise a fraud claim. Santander considered Mrs W's claim under the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) but declined to refund her. Santander say Mrs W was given an effective warning and didn't do sufficient checks to ensure the investment was genuine. Santander contacted the receiving bank but have been unable to recover Mrs W's funds.

Mrs W wasn't happy with Santander's response, so she brought a complaint to our service.

An investigator looked into Mrs W's complaint and upheld it in full, asking Santander to refund 100% and pay 8% interest on that refund. The investigator explained they didn't think the warning Santander had provided was effective, as defined by the CRM Code. The investigator also felt that Mrs W had a reasonable basis for believing that the investment was genuine.

Santander disagreed with the investigator's opinion, saying the warning they provided was tailored to Mrs W's situation and was effective. Santander also highlighted a number of issues they had with the information Mrs W was given by the scammers, which they feel meant Mrs W should've done further checks before making the payments.

However, Santander did offer to refund Mrs W 50% of the funds she lost and pay 8% on that refund. Mrs W rejected Santander's offer.

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

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 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.

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

- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning
- The customer made payments without having a reasonable basis for believing that:
 - (i) the payee was the person the customer was expecting to pay
 - (ii) the payment was for genuine goods or services and/or
 - (iii) the person or business with whom they transacted was legitimate.

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

Did Mrs W ignore an effective warning?

The CRM Code defines an effective warning, saying it must be understandable, clear, impactful, timely and specific.

Santander took Mrs W through a dynamic warning, which meant Mrs W was asked questions about the payment she was making then shown responses based on her answers. I won't include the entire warning in this decision, as there is no dispute about the warning Mrs W was shown, just whether or not it was effective as defined by the CRM Code.

Having considered the warning as a whole, I'm not satisfied that it was effective. I'll explain why.

Part of the warning said:

"Even legitimate-sounding investments can sometimes turn out to be scams. Before proceeding, you need to be sure it's not a scam.

The higher the return promised, the more likely it's a high-risk investment or a scam. Research using different sources to spot things that don't seem right. Don't rely on information or documents provided to you as these could be fake.

You must check that the person and company offering, promoting or selling this bond is authorised or registered by the Financial Conduct Authority (FCA). This includes anyone who is advising or arranging this for you."

Several screens later a further warning was provided which said:

"Use the FCA's ScamSmart tool to make sure the company you're investing with is registered AND to make sure there isn't a warning of a cloned or fake company. Use the FCA register to check all the contact details match the correspondence you've received. Call the telephone number for the company on the FCA register to confirm the investment is legitimate."

The first part of the warning that Mrs W saw doesn't refer to cloned firms, what a cloned firm scam looks like, or what the warning signs are that Mrs W should be looking out for – so I don't think it would've resonated with Mrs W or been impactful.

In this case, Mrs W didn't believe she had been contacted out of the blue as she was a member of the comparison website and also of C, who the initial email offering the fixed bond was sent by. All of the documentation that Mrs W received referred to and suggested this was a bond that was being offered by C in conjunction with F. Mrs W knew of F and C as well-known, reputable financial institutions and saw no reason to doubt that they were genuine.

Mrs W did do an online search on the fixed rate bond and found information on a website (not F or C's), which said that C offered a corporate fixed rate bond at 11%. This satisfied Mrs W that the rate of return being offered was genuine.

While Santander have picked up on many small details in the documentation that Mrs W was sent, for example the ISN isn't correct and there are some small typos, the overall appearance of the documentation was very professional to a lay person – which Mrs W was. It's very easy with the benefit of hindsight and knowing how these scams operate, to go back and find tiny details that would not have been immediately obvious to Mrs W.

And, while Santander's warning does refer to using the FCA's website to check for cloned firms, which F was, this was three warning screens into the dynamic warning. I'm not satisfied that based on the information Mrs W had to hand that it would've been impactful for her. Especially considering the previous screens she'd seen which didn't bring to life what a cloned company scam looks like, so I don't think Mrs W would've been concerned or thought that this might apply to her situation.

Having considered the entirety of the scam warning screens that Mrs W saw at the time of making these payments, I'm not satisfied that the warnings are effective as defined by the

CRM Code, in these circumstances. On that basis, I'm not satisfied that Santander can rely on that exception to reimbursement.

So, I've gone on to consider whether Mrs W had a reasonable basis for believing the investment was genuine.

Did Mrs W have a reasonable basis for believing the investment was genuine?

Taking into account the information that Mrs W had available at the time she made the payments and the circumstances under which she made the payments, I'm satisfied that she did have a reasonable basis for believing the investment was genuine. I'll explain why.

Mrs W did an online search in relation to the bond and the rate being offered and found a link that said C was offering a corporate bond at 11%. I think this would've been persuasive for Mrs W that this was a genuine rate and bond.

The contact that Mrs W received was from two companies, both of whom she is a member of. So, it wasn't contact out of the blue so to speak, as both of these companies do send members emails offering products.

The paperwork and information that Mrs W was given suggested that this bond was from C in conjunction with F, both companies that Mrs W knew and trusted.

I also have to overlay this with the fact that Mrs W's husband was going through serious health issues at the time, which required daily hospital visits. Added to this, the scammers knew about the situation and bombarded Mrs W with daily missed calls and intense pressure to complete the investment. Mrs W had told them not to call in the afternoon as she would be at the hospital, but they called at these times regardless. I think the added pressure and strain that Mrs W was under at the time she made these payments is likely to have affected her judgement. While I don't think that Mrs W was vulnerable as defined by the CRM Code, whereby she couldn't protect herself from the scam, I do think that she was in a vulnerable position which the scammers took advantage of. I'm also conscious that this was a very complex and sophisticated scam, which may be obvious to Santander who are an expert in these matters. But it plays on a consumer's natural instinct to trust well known institutions or companies.

So, while Santander may've picked up small items that they think should've been obvious to Mrs W, I'm not satisfied, taking into account her circumstances at the time, that I would've expected her to notice and pick up on these fine points. I appreciate that Mrs W made payments to an unrelated company (I), however she assumed they were involved in the bond because of the trust she put in C and F. I think if Mrs W's personal circumstances had been different then it's possible that she may've questioned this more. But she was being pressured into taking action quickly by the scammer, who knew what she was going through in her personal life.

Having carefully considered all of the points that Santander have raised, I'm not satisfied that they can rely on this exception to reimbursement.

As I'm not satisfied that Santander can rely on either exception to reimbursement, Mrs W is entitled to a full refund under the CRM Code. Santander should also pay interest on that refund at 8% simple interest per year, calculated from the date they declined Mrs W's claim until the date of settlement.

Putting things right

To put things right Santander UK Plc should:

- Refund Mrs W in full
- Pay simple interest of 8% per year on that refund, calculated from the date Santander declined Mrs W's claim under the CRM Code 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 W how much it's taken off. It should also give Mrs W 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 W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 10 July 2024.

Lisa Lowe
Ombudsman