

The complaint

Ms C complains that Santander UK Plc (Santander) won't refund money she lost money in an investment scam.

What happened

What Ms C says:

In 2018, Ms C was told about an investment by a family friend – who said they'd received good returns from it. She went to an 'investment event' organised by the directors of the firm (which I call 'firm A') and was impressed by the presentation.

She spoke to several investors who'd received a return on their investments. She made two payments to firm A from her Santander account:

Date	Payment	Amount
9 October 2018	Faster payment	£15,000
10 October 2018	Faster payment	£15,000
Total		£30,000

Ms C was promised a quarterly return of £750 on the investment of £30,000 – equivalent to 2.5% per quarter.

She suspected it was a scam when nothing was received on the expected dates.

Firm A was the subject of a Proposal to Strike Off in March 2024.

Ms C says Santander should have stopped the payments and asked her about them. She says she should've been protected by the bank - but wasn't.

What Santander said:

In February 2024 and March 2024, the bank said this was a civil dispute between Ms C and firm A. Santander said she should contact the company directly or report the matter to the police.

Our investigation so far:

Our investigator didn't uphold Ms C's complaint. She said:

- The payments weren't covered by the Contingent Reimbursement Model Code (CRM Code) as that came into effect in May 2019.

- Santander's records show it sent a scam warning to Ms C on the first payment; and intervened and stopped the second one. The latter payment was released following a phone call to Ms C. But with the passage of time, the call isn't available to listen to.
- But she considered what would have happened on the call. She didn't think Santander could've prevented Ms C from going ahead. Firm A was registered at Companies House and there weren't any negative articles about it prior to the date of the payments. And Ms C had got a recommendation about firm A from a friend. So it's likely she would have satisfied Santander the investment opportunity was genuine and the payments would've likely been released.
- Ms C told us she received a payment of £750 into another account – which suggested firm A intended to make the agreed payments.
- When Ms C contacted Santander in February 2024, the bank tried to recover the funds, but given that firm A entered proceedings to be struck off in 2024, this didn't have any chance of success.

Ms C asked that an ombudsman look at her complaint, and so it has come 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.

I'm sorry to hear that Ms C has lost money. It's not in question that she authorised and consented to the payments in this case. So, she is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 banks 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 declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether Santander acted fairly and reasonably in its dealings with Ms C when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it came into effect in May 2019 – after the payments in question.

If the payments were of a sufficient size and were out of character with how Ms C normally used her account – then we would expect Santander to have intervened and spoken to her about them. I looked at Ms C's account, and it's fair to say that the payments were unusual compared to the way in which she used it. There were regular direct debit payments made – normally all under £100. And there was a regular monthly payment of £1,334 made by faster payment. So – it is reasonable to say that the payments in question were unusual for Ms C to make, and so we would expect Santander to have intervened – which the bank's records show they did.

The bank said they sent a scam warning to Ms C on the first payment; stopped the second one and spoke to her. But – as our investigator says, the call isn't available to listen to – so without that, we must form a view on what likely would've been discussed.

And here, I'm satisfied that on the balance of probabilities, the payments would've been released. I say that as I think it's likely Ms C would've told Santander:

- She had been recommended to invest in firm A by a friend who'd received good returns.
- She'd attended a session run by firm A and was impressed – she was given brochures showing investments made by customers and the returns promised.
- Firm A was registered at Companies House – in October 2018.
- There were no warnings about firm A at the time.

Given this, I don't think it was likely that Santander would've been able to warn Ms C that the investment might not prove to be what she thought.

It was only later that problems emerged with firm A – there was a Proposal to Strike it off in March 2024. So, Santander couldn't have been reasonably aware that was to happen.

So, I don't consider Santander can be held liable to refund the money to Ms C.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks in situation like this. I looked at whether Santander took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money.

I can see that Santander contacted the recipient bank in February 2024, but no funds remained to be repaid. Given the passage of time and the fact that there was a Proposal to Strike off firm A - this wasn't a surprise.

I can only suggest that Ms C contacts the liquidators of firm A (if they are appointed) to lodge a claim. **(continued)**

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 8 January 2025.

Martin Lord
Ombudsman