

The complaint

Mr B complains that Santander UK Plc won't reimburse him after he lost money to an investment – that he now considers to have been a scam.

What happened

Mr B has explained that he was introduced to an investment opportunity, that I'll refer to as S, by a friend. His friend had already invested with the firm, was making good profits and had made withdrawals from the investment. This friend had heard of the investment opportunity also through another friend, who had already successfully withdrawn around four times what he had invested.

On this recommendation, Mr B was interested in also investing. Mr B decided to invest £10,000 of his own funds and a family member also provided a further £5,000 to add to the investment sum. Upon receiving an investment contract, in January 2022, Mr B therefore made a payment of £15,000 by faster payment to an account in S's name.

Mr B has explained that in June 2022, he received an email from S, advising that members of the company had falsified reports and an investigation was taking place but that Mr B would receive his initial investment back. He later received an email from the Police, advising S was being investigated.

Mr B complained to Santander, but Santander said that it was unable to provide an answer in the timeframes permitted and therefore provided Mr B with referral rights to our service.

An investigator considered the complaint and upheld it. He said on balance this was a scam and covered by the Contingent Reimbursement Model (CRM) Code and that none of the exclusions applied – so Santander should reimburse Mr B in full.

Santander said, to summarise, that it was premature to reach a decision on whether these payments fell within scope of the CRM Code while there is an active and ongoing police investigation. It questioned what evidence our service had received from the bank and argued that it wouldn't be fair to rely on evidence that wasn't available to it.

Santander also considered that even if the Code could be applied, the investigator has failed to consider Mr B's own contribution to the losses he suffered, where it considers red flags were apparent from the start.

Santander has also said that when making the payment towards the scam, Mr B was asked to provide the account details for S and received a 'confirmation of payee' notification that the payee name and account details matched. It says Mr B was then asked the purpose of the payment and he selected 'investment'. On this basis it says Mr B would've seen the following warning:

'Could this be an investment scam?'

*If you've been cold-called or contacted out of the blue about an investment opportunity, this is highly likely to be a scam. Please check the company details thoroughly, including on the Financial Conduct Authority's website ([fca.org.uk](https://www.fca.org.uk)) before transferring any money. **If you're at all nervous, cancel this payment and call us immediately.***

As Santander didn't agree with the investigator's view, the complaint has been referred 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.

It's important to highlight that with cases like this, in deciding whether there was in fact a scam, I need to weigh up the available evidence and make my decision about what I think is likely to have happened on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Santander is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the CRM Code where they have been the victim of an authorised push payment (APP) scam – as defined within the CRM Code. So if I am not persuaded that there was a scam then I will not have a basis to uphold the complaint.

Can Santander delay making a decision under the CRM Code?

In its more recent submissions, Santander has referred to exception R3(1)(c) as a reason for us to not yet reach an outcome on this complaint. This exception states that firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

While this exception provides a reason why firms *may* delay providing a claim outcome under the CRM Code, it doesn't impact that customer's right to refer the complaint to our service – and similarly it doesn't impact our service's ability to provide a complaint outcome when we consider we have sufficient evidence to do so. Additionally, in this case, I've seen no evidence that Santander advised Mr B that it was relying on this exception. It seems Santander only told Mr B that it had been unable to reach an investigation outcome on time.

I've therefore gone on to consider below whether we do have enough evidence to proceed at this time on Mr B's complaint.

Is it appropriate to determine Mr B's complaint now?

I ultimately have to decide whether it is fair and reasonable for Santander not to have yet given an answer on Mr B's claim for reimbursement of his losses. I am aware there is an ongoing investigation, and there may be circumstances and cases where it is appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence already available. And I am conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I am required to apply (which – as explained above – is the balance of probabilities).

The Lending Standards Board has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached. So in order to determine Mr B's complaint I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that Mr B was the victim of a scam rather than a failed investment.

I've reminded myself that Parliament has given ombudsmen the job of determining complaints quickly and with minimum formality. In view of this, I think that it would not be appropriate to wait to decide Mr B's complaint unless there is a reasonable basis to suggest that the outcome of any external investigation may have a material impact on my decision over and above the evidence that is already available.

Santander has raised concerns that, at present, it is unclear if any funds remain in the account where Mr B's payments were made to and if there are, this may impact the extent of his losses and complicate the recovery position.

I don't know how likely it is that any funds will be recovered as part of ongoing proceedings. But I agree that, if Santander has already paid a refund, it would not be fair or reasonable for those recovered funds to be returned to Mr B as well. Santander can ask Mr B to undertake to transfer to it any rights he may have to recovery elsewhere, so I'm not persuaded that this is a reasonable barrier to it reimbursing him in line with the CRM Code's provisions.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the police investigation or potential related court case for me to reach a fair and reasonable decision.

Has Mr B been the victim of a scam, as defined in the CRM Code?

The relevant definition of a scam in accordance with the CRM Code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So, it doesn't cover a genuine investment or a genuine business that subsequently failed.

So in order to determine whether Mr B has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose he intended for the payments was legitimate, whether the purposes he and S intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of S.

From what I've seen and what Mr B has told us, I'm satisfied Mr B made the payments with the intention of investing in forex trading. He thought his funds would be used by S to trade and that he would receive returns on his investment.

But I think the evidence I've seen suggests S didn't intend to act in line with the purpose for the payments it had agreed with Mr B.

Mr B made his payment to an account held in S's name. I've reviewed beneficiary statements for this account and while I can't share the details for data protection reasons, the statements do not suggest that legitimate investment activity was being carried out by S at the time Mr B made the relevant transaction. Whilst there is evidence S initially did carry out trades, it doesn't necessarily follow that it was a legitimate enterprise. S and its linked companies were not authorised by the FCA to carry out trading, so its operations clearly lacked an important element of legitimacy; it was required to be authorised to do the activity it was carrying out and it wasn't.

Similarly to this point, Santander has questioned how our service can reach a view on whether its customers were the victims of scams until it can be established what specific payments were made towards trades. However, for the reasons I've explained above (and other points I'll go on to cover) the overall position here is that this wasn't a legitimate investment – and Mr B's (and other investors' funds) weren't being traded in the manner they believed they were. So, in essence, regardless of where Mr B's 'specific' payment went, the overall firm and its investment model here was illegitimate - and Mr B had been deceived on this point.

Further concerns centre around the owner of S (who was bankrupt at the time). From the paperwork provided to consumers, he appears to have "personally guaranteed" the investments (despite forex being a high-risk investment and him never being in a financial position to do so). He also signed contracts on behalf of S despite not officially being listed as the director of the business. He appears to have acted as a 'shadow director', when he would've been disqualified as a director in his own right due to his bankruptcy. Furthermore, S was listed as an 'IT consultancy' business on Companies' House and not a financial services firm.

I've also noted that, when highlighting its concerns about Mr B's own contributions towards his losses, Santander has also raised several elements of the scam that ought to have caused concern to Mr B. It's referred to a version of contracts it's seen, supplied by other investors, wherein customers were told to not disclose to their banks that this payment was for an investment, to avoid their accounts being frozen due to S's lack of regulation. While this wording is not included within Mr B's own contract, it seems Santander is also aware of various behaviours of S's that indicate the 'investment' was in fact a scam.

So based on the above, along with the weight of testimony we have seen from other consumers who invested in S, I am satisfied that it is more likely S was not acting legitimately, since its intentions did not align with Mr B's intentions, and I am satisfied that S was dishonest in this regard. It follows that I'm satisfied Mr B was the victim of a scam.

Is Mr B entitled to a refund under the CRM code?

Santander is a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances and it is for Santander to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

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

- The customer ignored what the CRM Code refers to as an “Effective Warning” 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: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate

**Further exceptions outlined in the CRM Code do not apply to this case.*

Did Santander meet its obligations under the CRM Code and did Mr B ignore an effective warning?

I've considered the warning referenced earlier in my decision, that Santander has said it provided to Mr B. However I don't consider it to be 'effective' under the CRM Code. For a warning to be considered effective, the Code requires it to be (among other things) impactful, clear and provide the customer with the potential consequences of proceeding. I don't think this warning met these criteria – it doesn't cover most of the key hallmarks we see in these scams, and there's no explanation of what may happen to Mr B's funds, should this turn out to be a scam.

In any event, an effective warning is a minimum requirement expected of firms in under the CRM Code. In this case, the payment Mr B was making was significantly higher than any others he'd made and Santander ought also to have contacted Mr B prior to the payment being made, to ensure he wasn't at risk of financial harm from fraud.

Therefore I'm not satisfied that Santander can rely on this exception of the Code as a reason to not reimburse Mr B.

Did Mr B have a reasonable basis for belief?

I've considered Santander's assertion that Mr B proceeded with this scam, despite red flags from the start and whether he acted reasonably in light of the circumstances. Santander has raised that prior to sending the investment funds, Mr B completed minimal research, only checking whether S was registered on Companies House and reviewing the perceived director's online profile. Santander considers Mr B proceeded largely on the basis of his friend's recommendation. However, I think this recommendation carries a lot of weight – not only had Mr B's friend vouched for the investment, but he had shown Mr B his account statements of the returns he was making and had also made successful withdrawals, as had his colleague. I can understand why Mr B would've found this compelling – and while it is of course always prudent to conduct your own research, I can understand why Mr B would not have had concerns of this being a scam, based on his friend (and a friend of this friend) having both made money from the investment over a prolonged period.

I've also thought about the perceived returns Mr B believed he would be making. Mr B was told by S to expect returns of around 2% compound interest. I accept these returns were high, and can appreciate why they would appear unrealistic in some circumstances. But again, Mr B had seen clear evidence from someone he trusted that the returns *could* be believed, as his friend's investment was performing so well. So I can understand why this would've allayed any doubts he may otherwise have had. Mr B has also explained that he's not an experienced investor. He's completed some investments through shares, but knew relatively little about forex trading by which to compare this information to.

When considering the warning Santander provided and its advice to review the FCA website, prior to proceeding, Mr B has explained he doesn't recall seeing the warning, but that he receives generic warnings on his app every time he makes a payment so considered this would have been the same. Considering the nature of the warning and the reasons I've already covered above, I can understand why Mr B wouldn't have been concerned by it. While it does refer to the FCA website, it only advises to do so to check the company's details thoroughly, rather than to ensure they are regulated, and the importance of this. Considering Mr B had already checked that the company existed, and knew others who had used the company already, I can understand why he wouldn't have understood the importance of this information.

Santander has raised concerns about copies of contracts it's seen from other victims of this scam, that contain advice to mislead banks and set out that the firm is not regulated. However, this was not the case in Mr B's own contract. While the contract lacked professional finesse – for example it wasn't on headed paper – I don't think this alone ought to have caused Mr B to really doubt what he was involving himself with – considering the other elements of the scam that supported it being legitimate at the time. Mr B has explained that S advised him it wasn't regulated – but only after he had already invested and not long before the Police became involved. He's explained he knew little about the FCA and so this didn't spark concerns at this time.

Overall, for the reasons I've explained above, I think it is fair for our service to consider Mr B's complaint based on the evidence currently available and having done so, I think it is fair and reasonable for Santander to fully reimburse him under the CRM Code.

My final decision

My final decision is that I uphold Mr B's complaint against Santander UK Plc and I direct it to

- Refund Mr B in full the payment he made towards the scam (£15,000)
- Apply 8% simple interest, from the time it declined Mr B's claim under the CRM Code until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 December 2024.

Kirsty Upton
Ombudsman