

## **The complaint**

Mr S complains that Santander UK Plc hasn't refunded him after he fell victim to a scam.

## **What happened**

The background to this complaint is well-known to both parties and so I'll keep my summary of events brief.

Mr S was introduced to an investment opportunity toward the end of September 2021 by some former colleagues. He understood the opportunity to involve the trading of forex and his colleagues confirmed they'd been invested for a while and had been receiving returns on their investment.

Interested by the opportunity, Mr S was put in touch with a Mr B, who headed up the scheme. Following further discussions about the opportunity Mr S decided to invest. He sent £10,000 to an account at Mr B's instruction on 21 October 2021, having signed an agreement for the investment of his money.

Mr S was provided with regular updates regarding the performance of his investments. But, in June 2022, news began to spread that there were issues with the scheme. Attempts to withdraw invested funds failed, with many investors reporting the same problems. Police began contacting individuals to tell them they were investigating Mr B and the linked firms for fraud.

Mr S then reported the scam to Santander. It took note of his complaint but said it couldn't provide an answer because the police investigation was ongoing. Mr S continued to chase for answers and ended up raising a complaint about Santander's conduct in answering him. It recognised its shortcomings and paid Mr S £250 in compensation, but still didn't provide an answer as to whether it would reimburse the scam loss, so Mr S referred his complaint to our service.

One of our investigators considered what had happened and recommended the complaint be upheld. He was satisfied Mr S had fallen victim to a scam and that Santander ought to reimburse his loss under the Contingent Reimbursement Model (CRM) Code.

Mr S accepted the investigator's findings, but Santander did not. It still felt the police investigation ought to be concluded before any decisions about reimbursement could be made. It also questioned whether Mr S had held a reasonable basis for believing he was making a legitimate investment with legitimate parties.

## **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'm upholding it and for broadly the same reasons as our investigator.

The starting point at law is that Mr S is responsible for any payments from his account which

are properly authorised. This is set out in the Payment Service Regulations (2017) and confirmed in his account terms and conditions.

Santander is, however, a signatory to the Lending Standards Board's CRM Code. The Code is in place to see the victims of scams reimbursed in most circumstances. But there are considerations that must be taken into account when assessing whether a customer is due a refund under the Code:

- Is there sufficient evidence to show the customer has been the victim of a scam, rather than it being a case of them having a civil dispute with a supplier of goods/services? Or can a decision under the Code fairly be delayed if there is an ongoing investigation into whether a scam has taken place?
- Are there any exceptions to reimbursement (as set out in the Code) that can be fairly relied upon by Santander to deny reimbursement under the Code?

*Can Santander delay making a decision under the CRM Code?*

The CRM Code says 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.

Santander told Mr S it was unable to reach a decision on his scam claim as it was considering a large number of similarly affected customers and there was an ongoing police investigation. And our service is aware of many other claimants – not all Santander customers – also saying they fell victim to a scam with Mr B. We are also aware that there is an ongoing police investigation into Mr B and the connected businesses.

I can see why Santander delayed in giving a decision at the time of its final response, and it was able to do so under the Code. But this service has since explained further evidence to Santander about why we believe we can proceed with the outcome of the scam claim, and we've issued findings to that effect. Whilst Santander doesn't agree with those findings, I do find it's fair and reasonable for me to proceed.

And it is the case that Santander has now presented some arguments as to why Mr S ought not be reimbursed under the CRM Code.

*Is it appropriate to determine Mr S' complaint now?*

I ultimately have to decide whether it is fair and reasonable for Santander not to have upheld Mr 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 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 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 S 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 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's objections to the complaint proceeding are varied, and not necessarily specific in terms of Mr S' complaint. Broadly speaking, it is concerned that the investigating body may: not find that fraud has taken place, determine that some 'investors' may have sent their funds to Mr B when he was operating legitimately (and possibly later started to scam people), or not bring charges against Mr B or any parties connected to him. Santander also has some concerns over Mr S potentially being reimbursed twice: once as a result of his complaint with our service, and possibly as the result of any court action.

I will discuss some of Santander's concerns later in this decision, as part of my findings as to whether Mr S has fallen victim to a scam. There is some considerable overlap in that regard. But I don't find it's necessary to wait for the conclusion of a statutory body investigation, or any potential related court case, for me to reach a fair and reasonable decision.

To address the issue of reimbursement and potential 'double recovery', I would say it is unclear whether Mr S would be able to recover any of his funds as part of court proceedings.

It doesn't seem particularly likely that would be the case. But, if Santander has already refunded some money to Mr S by the time any court proceedings concludes, it would not be fair and reasonable for him to receive a greater sum than that which was lost. So Santander can ask Mr S to undertake to transfer to it any rights he may have to recovery elsewhere (over and above his actual loss).

Santander has said this would not be a straightforward process, and there would be difficulties. I can accept that might be true, but it doesn't provide sufficient reason to say reimbursement under the CRM Code can't proceed.

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

The CRM Code broadly defines an APP scam as a scenario in which a customer sends funds to another party for what they believed were legitimate purposes, but which were in fact fraudulent.

The CRM Code doesn't apply to civil disputes between legitimate parties, such as where a supplier of goods or services has been paid, and those goods or services haven't been received. That would mean a genuine investment which has failed would not be covered by the CRM Code.

I then need to consider what Mr S' intended purpose was when he sent the funds to Mr B, what Mr B's intended purpose was in taking receipt of those funds, and whether those purposes aligned. If they don't then I need to consider whether that was as a result of dishonest deception on the part of Mr B.

There isn't any dispute as to what Mr S' intended purpose for the funds was. He believed his money was being paid to Mr B for the purpose of investment, with returns to be generated through forex trading.

Mr B's intentions are where the dispute comes to a head. Santander isn't necessarily persuaded Mr B intended to defraud Mr S. I'm satisfied, based on all the available evidence and information, he did.

Mr S was instructed to make his payments to an account in the name of a business Mr B was connected to, which he did. And whilst those funds were received as intended, the evidence obtained in respect of that account (and others connected to Mr B) (evidence which I am unable to share with Santander) shows there was no investment activity in October 2021. There was, in fact, almost none in the months that followed, right up until the police became involved. And that is despite significant sums of client money being paid into that same account during that time. I've seen no evidence to suggest legitimate trading was taking place through any other means. Mr B claimed to be operating a business in forex trading and investment. That required it to be regulated with the FCA, and it was not.

Mr B told its customers that it was trading whilst completing the process of obtaining approval from the FCA. But there is no evidence to suggest that is true. And it's also the case that it's against FCA rules to carry out a regulated activity without having secured proper regulatory approval. So there was clear dishonesty in what Mr B was telling investors. That dishonesty was undertaken in order to draw people into the scam.

The actions of Mr B also help to establish this as a scam. He was personally guaranteeing the investments of clients, something he was almost certainly unable to do. Not only because of the total sums involved, but because he was bankrupt.

And, despite that bankruptcy, he was holding himself out to be the director of a business, including the signing of the agreements being entered into.

He was not the director and, because of his bankruptcy, couldn't be. He was disqualified from holding such positions. The records on Companies House also present evidence of a scam being operated. It is listed as being involved in IT services and management consultancy services (and specifically not financial management); purposes clearly removed from what it was being sold to potential investors as. It also filed no accounts with Companies House in all the time it operated.

Santander has itself, in responding to our investigator's findings and requests for information, pointed to some of these concerning features connected to Mr B and the investment proposal. And so it has recognised there are indicators that Mr B was operating a scam.

Considering all the above, along with the weight of testimony and evidence we have seen from other consumers who invested with Mr B, I'm satisfied Mr B wasn't operating legitimately and was instead scamming people. His intentions did not align with Mr S' and that was as a result of dishonest deception on Mr B's part.

*Is Mr S entitled to a refund under the CRM code?*

I've said already that scam victims should be reimbursed under the CRM Code in most circumstances. But there are exceptions to reimbursement that a firm may rely on, where it can evidence they ought to apply. The two relevant exceptions set out in the CRM Code are where:

- the customer ignored an effective warning (as defined by the CRM Code) which was given at the point payment was being made;
- in all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without 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.

The CRM Code also sets out the standards that signatory firms are expected to meet. And where those standards aren't met, but where an exception to reimbursement would otherwise apply, it will be responsible for 50% of the customer's loss.

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

Santander hasn't relied on this exception to reimbursement. But in its response to the complaint lodged with this service it has referred to warnings given to Mr S at the time of payment, so I'm covering it for completeness.

I'm satisfied Santander failed to meet its requirements under the CRM Code as it didn't deliver an effective warning which was proportionate to the identifiable risk of financial harm through fraud to Mr S.

Given Mr S was paying someone new and considering the value of the payment (£10,000), I'm satisfied Santander ought to have held the payment so it could question Mr S about it. It's such a large payment that it ought to have been perceived as a big risk, and the proportionate response would have been to have a discussion about it, with suitable questions about the payment purpose being asked and tailored warnings then given.

I can't see there was a history of making similar sized payments to third parties on the account. There was a same size payment to one of Mr S' own other accounts. But that is very different to sending money to a new and unknown payee.

Santander have also indicated that the payee name returned a 'no match' when it was checked against the recipient account. That fact ought also to have factored into the perceived risk.

Santander did give a written warning, but it wasn't sufficient or proportionate in the circumstances.

In making my findings here I have taken account of the fact Mr S selected 'paying for a service' rather than 'investment'. I don't find this changes anything. The payment ought to have been flagged for a discussion in any case. And I'm satisfied Mr S' full intentions would have been revealed as a result.

As Santander hasn't met the standards for firms on effective warnings it can't rely on the exception to reimbursement. And it also means it becomes responsible for at least 50% of Mr S' loss.

*Did Mr S have a reasonable basis for belief when he sent the money to Mr B?*

One of Mr S' main reasons for believing the investment to be legitimate was because of the recommendations he'd received from people he knew well. Those people had already invested and were receiving returns into current accounts they held. Mr S has been able to evidence this.

I consider that to be a very powerful endorsement of the supposed investment and I can understand why Mr S put a good deal of faith in it. I find it was fair and reasonable for him to do so.

Santander has pointed to a number of factors it believes brings in the reasonable basis for belief exception to reimbursement. The list includes the 'no match' confirmation of payee result, that Mr B's business wasn't listed on Companies House as being connected to financial investment, that it also wasn't FCA regulated, and the perceived poor quality of communications from Mr B.

I've also taken note of Santander's reference to another business that doesn't appear to have been connected to Mr B and was based overseas. It's questioned why this business was involved and that Mr B's knowledge of it ought to have further called into question the legitimacy of the investment. But Mr B only appears to have learned of this other business after the scam was revealed and I've not seen evidence to show he was interacting with it or knew of its involvement.

Whilst I have taken account of these points, I don't find they outweigh the factors in Mr S' favour. This was a very large and evidently persuasive and sophisticated scam. That isn't to say they would never reveal a scam. But the other elements that are present, and in particular the receipt of a strong endorsement from someone receiving exactly what was promised, persuade me that Mr S did hold a reasonable basis for believing the investment to be genuine. In turn it wouldn't be fair and reasonable for Santander to rely on the exception and Mr S ought to be compensated for his loss.

### **Putting things right**

On Mr S' acceptance, Santander must:

- reimburse the £10,000 lost to the scam;
- pay interest on that sum at 8% simple per year, calculated from 15 days after Mr S raised the scam claim to the date of settlement (that being the amount of time Santander had to respond to the scam claim).
- I make no further award of compensation for how Santander handled the claim. It has already paid £250 for the service provided and the award I've made takes account of Mr S being without the money he ought to have been refunded sooner.

### **My final decision**

I uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 April 2025.

Ben Murray  
**Ombudsman**