

The complaint

Mrs and Miss C complain that Santander UK Plc won't reimburse them after they lost money to an investment – that they now consider to have been a scam.

While the account in question belongs to just Mrs and Miss C, it was Mr and Mrs C's funds that were lost to the investment – and Mr C is a representative in this complaint. So for ease of reading, I will refer to Mr and Mrs C throughout this complaint.

What happened

Mr and Mrs C have explained that they were introduced to an investment opportunity, that I'll refer to as S, by their daughter's (Miss C) longstanding best friend, who worked for S. This friend had also already invested in S and received good returns - and had decorated her home with the profits – and other friends in their circle had also invested. Miss C had already joined the investment on her friend's recommendation in September 2021. Therefore, when the opportunity arose for Mr and Mrs C to also invest, they decided to do so.

The majority of information Mr and Mrs C received was from Miss C's friend and her family. It was their understanding that S was 'recognised by the FCA' (Financial Conduct Authority) and that funds were being invested in gold. When Miss C initially tried to invest, she was told there were only a limited number of investors able to invest at one time and she was therefore added to a waiting list for others to leave before she could join. Mr and Mrs C then also had to wait on this same waiting list for their turn, which they felt added to the legitimacy of the investment, as there was no rush or pressure to send funds.

When Mr and Mrs C were offered to join the investment, they received a contract, confirming the owner of S will personally guarantee any losses incurred as a result of the investment. On 27 January 2022, they sent £20,000 towards the investment via faster payment, to an account in S's name.

Mr and Mrs C have said they received weekly statement updates, advising how their investments were progressing. Mr and Mrs C have explained that in June 2022, Miss C's friend employed by S told them there was a problem with the firm, and that equipment had been taken by another staff member. Mr and Mrs C have since been advised all assets of S's are frozen and Police have been involved to investigate S.

Mr and Mrs C complained to Santander. Santander initially reviewed their claim and advised it considers this to be a dispute between them and S. However, when providing its final response letter, it confirmed that it was now waiting on the outcome of the Police's investigation.

Mr and Mrs C remained unhappy and referred their complaint to our service. Our investigator upheld the complaint. She 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 and Mrs C 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 and Mrs C's own contribution to the losses they suffered. It said Mr and Mrs C ought to have done more research into the firm before investing such a large sum.

Santander has also said that when making the payment towards the scam, Mr and Mrs C were 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 they were then asked the purpose of the payment and they selected 'investment'. On this basis it says Mr and Mrs C would've seen the following warning:

*'Criminals will urge you to pay today. Using **pay later** can help stop scams by giving you time to cancel.*

If you've been cold-called about an investment opportunity, this could be a scam. Please stop.

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 Authorities 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'.

Santander has also said that the payment flagged on its fraud detection systems for further checks and it appears a call was therefore made to Mr and Mrs C. While the call could not be traced, and no records have been provided on what was discussed, Santander has advised the following fraud script would have been read as part of the call:

'If you've received a cold call about an investment opportunity, or if you haven't checked the company you're investing with, this could be a scam. We recommend always checking the company details thoroughly on the Financial Conduct Authority website ([fca.org.uk](https://www.fca.org.uk)). If you're at all suspicious about who you're paying, you shouldn't continue with this payment. Are you comfortable to continue with this new payment?'

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 submissions to our service, 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. Santander also explained in its final response letter that it couldn't provide an outcome to Mr and Mrs C's complaint due to the ongoing police investigation.

But this provision only applies *before* the firm has made its decision under the CRM Code. So, it can't seek to delay a decision it's already made. Santander had already provided a claim response to Mr and Mrs C before this point, advising this was a dispute between them and S. So, I don't think Santander can now fairly rely on this provision.

Is it appropriate to determine Mr and Mrs C'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 and Mrs C's claim for reimbursement of their 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 and Mrs C'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 and Mrs C were the victims 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 and Mrs C'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 and Mrs C's payments were made to and if there are, this may impact the extent of their 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 and Mrs C as well. Santander can ask Mr and Mrs C to undertake to transfer to it any rights they may have to recovery elsewhere, so I'm not persuaded that this is a reasonable barrier to it reimbursing them 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.

Have Mr and Mrs C 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 and Mrs C have been the victim of a scam as defined in the CRM Code I need to consider whether the purpose they intended for the payment was legitimate, whether the purposes they 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 and Mrs C have told us, I'm satisfied they made the payment with the intention of investing in gold. They thought their funds would be used by S to trade and that they would receive returns on their 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 and Mrs C.

Mr and Mrs C made the 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 and Mrs C 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 and Mrs C's (and other investors') funds weren't being traded in the manner they believed they were. So, in essence, regardless of where Mr and Mrs C's

'specific' payment went, the overall firm and its investment model here was illegitimate - and Mr and Mrs C 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 gold and forex quoted on the contract 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 and Mrs C's own contributions towards their losses, Santander has also raised several elements of the scam that ought to have caused concern to Mr and Mrs C. 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 and Mrs C'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 and Mrs C's intentions, and I am satisfied that S was dishonest in this regard. It follows that I'm satisfied Mr and Mrs C were the victims of a scam.

Are Mr and Mrs 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.*

I am also mindful that when Mr and Mrs made this payment, Santander should fairly and reasonably also 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). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before it processed a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

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

I've considered the warning referenced earlier in my decision, that Santander has said it provided to Mr and Mrs C. 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 to be impactful and clear, and there's no explanation of what may happen to Mr and Mrs C's funds, should this turn out to be a scam.

In any event, under the CRM Code, an effective warning is a minimum requirement where a scam risk is identified. In this case, Santander has confirmed it did make a call to further question the payment, although can't provide any information on this call, other than the script I've included. Based on the evidence provided, I can't conclude Santander did enough to effectively warn Mr and Mrs C about these types of scam, as the script it has provided generally aligns with what was already included in the online warning.

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

Did Mr and Mrs C have a reasonable basis for belief?

I've considered whether I think Mr and Mrs C acted reasonably when making this payment. Santander has raised that prior to sending the investment funds, Mr and Mrs C failed to conduct their own research, and proceeded largely on the basis of the recommendation of their daughter's friend. However, I think this recommendation carries a lot of weight – not only had Miss C's friend vouched for the investment, but this friend also worked for S and had received returns already which Miss C had seen evidence of.

Whilst this friend has also unfortunately been a victim of this scam, I can understand why Mr and Mrs C would assume that if a friend was working for a firm, and vouched for that firm, that there wouldn't be issues with its legitimacy. While working in fraud and scams based departments can provide a heightened awareness for these scenarios, it's important to remember that in everyday life, people aren't expecting to be the victim of a scam – and I think it's fair to say that most individuals would assume that a friend would be aware if they were working for an illegitimate firm – and wouldn't refer their friends and family to the firm's services if they had any concerns. Therefore while it is, of course, always prudent to conduct your own research – and while I appreciate Mr and Mrs C invested a lot of money here – I can understand why they wouldn't have had concerns about the potential for being scammed based on their personal circumstances. Mr and Mrs C have explained they're cautious people and that their friends had been investing for over a year without issue before they became involved. I can see why this would have allayed any of their own concerns they had that this was a genuine opportunity.

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 and Mrs C'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 and Mrs C to really doubt what they were involving themselves with – considering the other elements of the scam that supported it being legitimate at the time.

I've also considered the potential investment returns offered in this scam. Mr and Mrs C have explained that their understanding was that this was dependent on the profit of the trades, minus a deduction from the firm. They have also explained that they received weekly

statements. I understand that other victims of this scam believed they were receiving very high returns – that could be considered ‘too good to be true’. From Mr and Mrs C’s testimony I don’t think the unrealistic returns were immediately apparent to them – they had seen that others had benefitted very well but weren’t being promised or advised anything specific - so I don’t think they acted unreasonably by proceeding based on what they had been told.

I can also understand why being placed on a waiting list before investing would’ve added to the sense of legitimacy to Mr and Mrs C. Comparing this to the warning Santander provided them, which refers to cold calling and pressure tactics, it’s clearly not the typical scam scenario, so I can understand why this would’ve reassured Mr and Mrs C.

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

My final decision

My final decision is that I uphold Mr, Mrs and Miss C’s complaint against Santander UK Plc and I direct it to:

- Refund Mr, Mrs and Miss C in full for the payment they made towards the scam (£20,000)
- Apply 8% simple interest, from the date it declined their claim under the CRM Code until the date of settlement.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs C and Miss C to accept or reject my decision before 26 November 2024.

Kirsty Upton
Ombudsman