

The complaint

Ms L complains that Santander UK Plc hasn't refunded her after she fell victim to a scam.

What happened

The background to this complaint is well-known to both parties and the facts are not in dispute. And so I'll only summarise the key details of what happened.

Ms L was approached by an investment broker in February 2020. She was presented with an opportunity to invest with a company I'll call L. She was able to discuss the details at length with the broker on the phone and via email. She was sent a detailed investment brochure which described the offering and the background of L. Keen to proceed, her details were passed on to L, who then got in touch to discuss further.

Ms L sought some advice before agreeing to invest and discovered that L wasn't regulated. She asked L about this and was told about the involvement of another party, whom I'll refer to as N. L explained it had 'employed N to facilitate the purchases of the investment' to address the issue of regulation and FCA coverage. L directed Ms L to N's registration with the FCA and Companies House.

Ms L decided to go ahead with the investment and paid £50,000 to N on 21 February 2020, at L's instruction. Receipt of funds was confirmed shortly after.

L then contacted Ms L again to explain it was expanding its investment offering. Ms L decided to invest further sending £100,000 in March 2020. Again, receipt of funds was confirmed by L shortly after.

Ms L started to receive the promised returns, and all went as expected until April 2021. But then payments stopped. Ms L chased L and excuses were given. Eventually communication stopped altogether. It then transpired that L and N had gone into administration. Ms L realised she'd fallen victim to a sophisticated scam and reported what happened to Santander.

Santander considered Ms L's scam claim but said it wouldn't reimburse any of her loss. It said she'd not been the victim of a scam but had instead invested with legitimate parties but that the investment had failed.

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. I'll explain why.

The starting point at law is that Ms L is responsible for any payments made from her account which were properly authorised, as they were here. This is set out in the Payment Service Regulations (2017) and is confirmed in her account terms and conditions.

However, Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. The Code is in place to see the victims of scams reimbursed in most circumstances.

Are the payments made by Ms L covered by the CRM Code?

Santander has argued that the Code doesn't apply because Ms L's payments went to legitimate parties for legitimate purposes. It believes she has a civil dispute with L and/or N, rather than it being a case of her having been scammed. But I disagree. There are some key reasons for this, all of which Santander will already be aware of:

- The director of L has been disqualified as a director on Companies House for eight years, by the secretary of state.
- A full winding up order for L can be found on Companies House.
- The director has failed to provide liquidators with accounting records for several of his companies and has said he will not be providing these.
- The FCA issued a warning about L, in March 2020, saying it was providing financial services without authorisation.
- There is no evidence to suggest L was operating as legitimate a company. There is no evidence of any investments made. Some consumers received limited monthly returns – as Ms L did – while others received no returns at all.
- The lack of co-operation by the director with the liquidators and the disqualification of the director persuade me that the inducement of payment by the victims was as a result of the director and his businesses dishonest deception.

Santander has presented no persuasive evidence that L was operating legitimately and so I'm persuaded Ms L has been the victim of a scam and her payments ought to be covered by the CRM Code. That it was registered on Companies House does not persuade me it was a legitimate enterprise.

Nor does the fact that some investors received payments from L. This is not an uncommon feature of investment scams, with victims being paid in order to maintain an air of legitimacy and to encourage other victims to invest money.

Santander has suggested the involvement of N also indicates that the investment was genuine, or that the CRM Code should not apply as it is to N that payment was made. But N was no more than an intermediary here. Ms L's funds quickly moved from it to L, as evidenced by the correspondence between Ms L and the scammers, in which they confirm receipt of funds within days.

I'm satisfied Ms L's funds were out of her control, and in the control of the scammers, once they left her account. And Ms L had no customer or contractual relationship with N. Nor did she have any direct dealings with it at the time she invested. This means Ms L's payments are covered by the Code.

This position has been explained at length to Santander in previous decisions issued by this service. And with that in mind I'll not repeat any further detail here. Santander can instead refer back to past decisions should it require further context.

Santander has also highlighted the involvement of the FSCS and potential claims against N through it. It is the case that the FSCS *might* consider some claims against N. But not all companies that used N are to be covered; some are excluded.

Even if Ms L were able to pursue a claim with FSCS, it and the Financial Ombudsman Service are separate organisations, and the rules governing whether a customer is eligible to receive compensation from FSCS are separate to those which apply to the Financial Ombudsman Service. FSCS will consider the claims submitted to it under the rules set for the FSCS by the Financial Conduct Authority.

Consumers might be permitted to pursue a claim to the Financial Ombudsman Service and the FSCS (should FSCS accept the consumer's claim) involving L, and at the same time.

However, should a consumer receive compensation from the FSCS relating to their claim against L, the consumer may be required to pay any further compensation to FSCS that they receive from their bank (including as a result of any Financial Ombudsman Service award) relating to the consumer's complaint against L. Any questions relating to the terms on which compensation is paid by the FSCS should be directed to it.

I don't consider the involvement of the FSCS means Ms L hasn't fallen victim to a scam. And this service is aware of the FSCS directing consumers to pursue a scam claim under the CRM Code, including bringing a complaint to us.

Should Ms L be reimbursed under the CRM Code?

There are exceptions to reimbursement set out in the Code that Santander might choose to rely on, if it can evidence that they apply. The relevant exceptions can be summarised as:

- The consumer ignored an effective warning given by Santander at the time payment was made;
- The consumer didn't have a reasonable basis for believing they were paying legitimate parties for legitimate purposes.

Santander has put forward little in the way of argument or evidence that either of these exceptions to reimbursement ought to apply. And I'm satisfied that neither can fairly or reasonably be relied on to deny Ms L a refund under the Code.

Considering the effective warnings exception first, I've seen no evidence to suggest what the Code defines as an effective warning was ever given to Ms L. I'm aware that Santander spoke with Ms L on the phone for at least two of the payments. But from the evidence I've been given by Santander, there's nothing to demonstrate any kind of warning was given. That's despite some very high value transactions being authorised. And so it appears Santander failed to give an effective warning when it needed to.

Even if Santander were able to evidence that it did provide an effective warning, I'm not persuaded the exception to reimbursement could be relied upon. It's clear L was running a very convincing and sophisticated scam, and so I'd more likely than not find Ms L reasonably moved past any such warning, rather than it being the case she simply ignored it.

Turning to the reasonable basis for belief exception, I'm also satisfied this can't be fairly relied upon. I've already said that L was running a convincing and sophisticated scam. It's communication with its victims – including the use of websites requiring login details and investment brochures – appeared professional and persuasive. The engagement of an FCA regulated business lent considerable apparent legitimacy to L, which was no doubt the

intention there. I've seen no evidence which was available at the time Ms L invested that would have revealed the scam.

Santander has referred to a warning about L on the FCA website, published in March 2020. But Ms L had already established a relationship and invested with L in February. So she wouldn't have seen that warning. The evidence shows she was making enquiries about FCA regulation in February 2020 and that's when she was reassured by N's involvement.

Santander's own position on L and N – in its continuing belief they were legitimate parties – is indicative of their apparent genuineness.

Taking these points together, I'm satisfied Ms L held a reasonable basis for belief when she made the payments toward the scam.

As no exceptions to reimbursement apply it is the case that Ms L ought to have been reimbursed by Santander under the CRM Code. It's then fair and reasonable that it compensates her to that effect now.

Putting things right

On Ms L's acceptance Santander must:

- Reimburse Ms L's loss to the scam. I believe this to be the £150,000 invested minus the £19,080.64 received in returns; *and*
- Pay interest on that sum at 8% simple per year, calculated from the date Ms L's claim was declined to the date of settlement.

My final decision

I uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 13 March 2025.

Ben Murray
Ombudsman