

The complaint

Mr and Mrs S 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.

What happened

Mr and Mrs S have explained that they were introduced to an investment opportunity, provided by a firm that I'll refer to as T, by a friend. Their friend was an accountant, with some knowledge of trading, had already been investing in T for around a year, was reporting good returns and a robust withdrawals procedure and was also neighbours with the director of T. Reassured by what they had seen from their friend, Mr and Mrs S contacted T's director themselves to find out more about the investment. During a call with the director, he explained the trading process and the technology he used to support his trading. Encouraged by everything they'd heard, Mr and Mrs S agreed to invest.

The first payment Mr and Mrs S made towards the investment was in June 2021 for £10,000, to an account in T's name. Mr and Mrs S also received a contract setting out the terms of the investment, which stated that the director personally guaranteed initial investments made. Mr and Mrs S were expecting to make around 2-2.5% interest per week on the investment.

Mr and Mrs S explained that they received weekly reports confirming how their investment was performing, and it appeared to be receiving good returns. Therefore, in September 2021, they invested a further £10,000. This was followed by two further payments of £10,000 in November 2021, which were intended to be investments for their children (but using Mr and Mrs S' own funds.) In March 2022, Mr and Mrs S made a request to T to withdraw some of the returns from their investment. After a reduction for commission, Mr and Mrs S successfully withdrew £18,696.

Lastly, in May 2022, Mr and Mrs S made a final payment to T for £10,350. This payment was made on behalf of friends who also wished to invest and was made to different account details to previous payments, in another business' name. However, the following month, Mr and Mrs S became aware that the Police were investigating T.

Mr and Mrs S complained to Santander, but Santander didn't consider it was able to provide a response until the police had concluded their investigation. Mr and Mrs S also expressed dissatisfaction on several occasions regarding the lack of updates provided by Santander, or acknowledgement of their communications. Santander told our service that when Mr and Mrs S made the first payment to T, they were asked the purpose for the payment, which they confirmed was 'an investment'. As a result, Santander issued a one-time passcode (OTP) to Mr S' phone, to confirm he was authorising the payment. It also provided the following scam message:

'Could this be a scam?'

"If you have 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 your money. If you're at all nervous, cancel this payment and call us immediately.'

When making further payments, Mr S received further OTPs to ensure it was him authorising the payments.

When Mr and Mrs S made their final payment on behalf of their friends, as this was a new payee they were asked again the purpose of the payment. This time Mr and Mrs S selected 'paying for a service' and received the following warning:

'Could this be a scam?

If you're paying an invoice and the account details have changed, or the invoice is for a service you haven't ordered or received, it could be a scam. We recommend always checking the payment details by phone or in person before making the transfer.'

If someone is pressuring you, please stop now.

Again, Mr S also received an OTP.

Mr and Mrs S remained unhappy with Santander's response and referred their complaint 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 Santander had relied on applied – so Santander should reimburse Mr and Mrs S in full. He also considered Santander should pay £150 compensation to acknowledge the lack of communication with Mr and Mrs S during the claim and complaints process.

In its response to our view, 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 S' own contribution to the losses they suffered, where it considers red flags were apparent from the start. Santander also questioned what it reasonably could have done in the circumstances to prevent the investment.

As Santander disagreed with the investigator's outcome, 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 victims 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?

Santander has suggested that our service should wait until Police investigations have concluded, before reaching an outcome on this case. There is an exception under the CRM Code (R3(1)(c)) that 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.

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

Is it appropriate to determine Mr and Mrs S'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 S'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 S'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 S were 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 and Mrs S'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 accounts where Mr and Mrs S'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 S as well. Santander can ask Mr and Mrs S 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 S been the victims 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 S have been the victims of a scam as defined in the CRM Code I need to consider whether the purpose they intended for the payments was legitimate, whether the purposes they and T intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of T.

From what I've seen and what Mr and Mrs S have told us, I'm satisfied Mr and Mrs S made the payments with the intention of investing in forex trading. They thought their funds would be used by T to trade and that they would receive returns on their investment.

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

Mr and Mrs S made their payments to two different accounts. I've reviewed beneficiary statements for these accounts 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 T at the time Mr and Mrs S made the relevant transactions. Whilst there is evidence T initially did carry out trades, and there was still *some* trading ongoing when Mr and Mrs S made their first payment, it doesn't necessarily follow that it was a legitimate enterprise. T 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. In any event, the loss from this initial payment has already been reimbursed to Mr and Mrs S by way of investment 'returns'. It's also not uncommon for scams of this nature to initially see genuine trades conducted in order to further entice victims into believing the scam.

Further concerns centre around the owner of T (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 T 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, T was listed as an 'IT consultancy' business on Companies' House and not a financial services firm.

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

Are Mr and Mrs S 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 and Mrs S ignore an effective warning?

I've considered the investment warning referenced earlier in my decision, that Santander has said it provided to Mr and Mrs S. 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 S'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, the payments Mr and Mrs S made towards this scam were the highest they'd made in the past 12 months, other than to an established savings account and to a known savings firm. I therefore think these payments to a new payee were sufficiently out of character that Santander ought to have also contacted Mr and Mrs S, prior to processing the payments, to assure itself that they weren'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 and Mrs S.

I've considered the final payment Mr and Mrs S made, where a different payment purpose was selected. Mr and Mrs S can't recall why they chose this payment purpose. I'm aware that in some cases, T's director was advising individuals to do so, in order to avoid its accounts being frozen, so it's possible this was the reason, or potentially it was an oversight on Mr and Mrs S' part. In any event, while Mr and Mrs S have arguably impacted Santander's ability to provide an automated warning that is effective under the CRM Code for this final payment, I've also taken into account that, again, this was an unusually high

value payment to a new payee that Santander ought to have questioned further prior to releasing. I'm therefore satisfied that Santander also can't rely on this exception of the Code for the final payment Mr and Mrs S made.

Santander has questioned what it could reasonably have done to prevent the payments Mr and Mrs S made. I agree that, based on the scale of this scam and the particular circumstances of individuals knowing other successful 'investors', it would've been very difficult for Santander to have been able to convince customers in some circumstances to not proceed. However, an ability for a firm to identify or stop a scam is not a prerequisite for that customer receiving full reimbursement, as Santander is aware. Even if I were to determine Santander met its obligations under the Code, Mr and Mrs S would still be entitled to a refund if they also weren't at fault. I've therefore gone on to consider Mr and Mrs S' own actions as part of the scam.

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

I've considered Santander's assertion that Mr and Mrs S proceeded with this scam, despite red flags from the start and whether they acted reasonably in light of the circumstances. Having considered the complaint holistically, I think their actions were reasonable in the circumstances.

First, I think the method by which Mr and Mrs S heard about this scam would've been very persuasive that it was legitimate. As explained, Mr and Mrs S heard about this opportunity from a friend, who had not only invested and received returns, but also knew the director on a more personal level and had a greater financial knowledge in this area than Mr and Mrs S. With these factors combined, while it may have still appeared as a potential 'risk' to Mr and Mrs S investing large sums, I can understand why it wouldn't have occurred to them that this may be a fabricated opportunity – as the proof of its legitimacy appeared to be proven by others.

I accept there were some red flags to the scam, such as lack of FCA registration and inflated investment return levels. Mr and Mrs S have said that they were unaware that T ought to have been FCA registered, and while there's reference to the FCA in Santander's warning, I don't think it's made explicitly clear what they should be checking the register for, for it to have caused alarm to Mr and Mrs S. And while returns were higher than would be expected from an investment, as explained, Mr and Mrs S appeared to have proof from others that these returns were being realised. Indeed, even in their own case, they were initially able to successfully withdraw a large sum of funds upon request.

I accept also that the final payment Mr and Mrs S made was to an account in another business' name. However, by this point, Mr and Mrs S had made a successful withdrawal as requested by them, for a significant sum. I therefore think by this point they would, understandably, have been entirely convinced of the legitimacy of the investment to not be concerned by a change of payment details.

Overall, for the reasons I've explained above, I think it is fair for our service to consider Mr and Mrs S'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.

Trouble and upset

From the evidence provided by both sides, it appears that Mr and Mrs S contacted Santander a number of times, expressing dissatisfaction that letters sent to Santander had gone unanswered or unacknowledged and that they weren't being kept updated on their claim. I can appreciate why this would've caused further stress at an already difficult time for

Mr and Mrs S and therefore think the recommendation made by the investigator for Santander to reimburse a further £150 to acknowledge this is appropriate.

My final decision

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

- Refund Mr and Mrs S in full the payments they made towards the scam (£50,350), minus the successful withdrawal they made (£18,696), totalling £31,654. Of this, £10,350 should be returned by Mr and Mrs S to their friends to cover their loss.
- Apply 8% simple interest, from 15 days after Mr and Mrs S initially made their claim for reimbursement, until the date of settlement.
- Pay a further £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 19 February 2025.

Kirsty Upton
Ombudsman