

The complaint

Mr J complains that Santander UK Plc hasn't refunded him after he reported falling victim to an investment scam.

What happened

I issued a provisional decision for Mr J's complaint on 24 October 2024. In it I set out the detailed background of what happened, alongside my intended findings. I've included a copy of that provisional decision at the end of this final one (in *italics*) so that it can be referred to. I won't repeat the same detail here, instead focusing on what's happened since.

Santander didn't provide a response to the provisional decision and so there is no new evidence or new arguments to be considered from its side.

Mr J did respond. He accepted much of what was said in the provisional decision. But he disagreed with my findings under *Did Mr J have a reasonable basis for belief when he sent the money to S?*

I won't repeat the full detail of what he said, though I have considered everything before issuing this final decision. I've summarised the key points:

- Mr J put a lot of faith in his friend's endorsement of S and those working for it, given the friend seemed to be doing well out of the investment. Mr J's friend reported a portfolio that had grown to over £150,000;
- Mr J was aware of other people that had also invested and were doing well too;
- When Mr J met with the person behind the investment (I'll refer to him as M from here), he was able to explain the trading strategy confidently and coherently. M explained that none of his trades ended until they were in a profitable position. M also told Mr J he had a large property portfolio and was in the process of buying a manor house. Mr J explained that M presented himself as a high net-worth individual. M told Mr J, "I can print money";
- Mr J understood that the no loss guarantee would only be given by M to investors that came on board within the first two years;
- Mr J received a contract that appeared legitimate, and he had a solicitor check it over too;
- Mr J knew M wasn't the director of S and he asked him about this at the time. M said he couldn't be the director of S (or any limited company) because he had a CCJ from an unpaid utility bill. Mr J didn't know M was bankrupt and he says even now he wouldn't know how he might access such information.

I've considered these points and everything else that Mr J and Santander have said over the course of the complaint before issuing this 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.

Having done so, I'm reaching the same finding as explained in my provisional decision and for largely the same reasons. Given it is only Mr J that responded to that decision, I'll focus here on addressing the points he raised. I might not address each specific part of his response, though I have considered everything. I've looked at the complaint holistically, and my findings focus on the key elements.

I will say here that I don't think Mr J did know or suspect he was falling victim to a scam at the time and decided to proceed anyway. I've not suggested that was the case, having seen no evidence to suggest as much. But what I must consider is the test presented by the CRM Code. The question I'm considering here is whether the belief held by Mr J was reasonable, in all the circumstances. And, overall, I'm persuaded there were enough concerning factors involved that Mr J ought to have significant enough cause to doubt the proposition being offered.

As part of making that finding, I must consider that he was investing £40,000. That's a very significant sum. I find it fair and reasonable to say a proportionate response to the risk of proceeding ought to involve a good deal of scrutiny being applied to a supposed investment opportunity.

Mr J has said he knew the returns being offered were high. That was recognised by Mr J from the outset. But, to give some further context, at 3% compounding weekly interest, that would mean a more than 400% return on investment in a year. I can appreciate Mr J might not be an expert investor and may not have carried out such a calculation. But it would seem that he would have – or ought to have – wanted to know what his investment would look like over time, say within a year. That would in turn have revealed just how much he was to gain, and that figure would have appeared improbably high.

Given the proposed figures, they sound too good to be true. Mr J was told by M that he could 'print money', and that sounds like a worrying statement, one that wouldn't be made by a genuine investor.

That being the case, and as I said in the provisional decision, I consider it fair and reasonably to say such returns ought to have been viewed with a degree of scepticism. But I can't see that such significant returns, much higher than available anywhere else, were really questioned or evidenced.

I can appreciate why Mr J would have trusted his friend's judgement at the time of investing. And it appears evident this friend was completely drawn into the scam himself. But it also appears to be the case that Mr J saw no evidence to back up the claims that were being made, neither from the friend or from M. Indeed, Mr J has explained that he didn't see any accounts or portfolios and wouldn't have asked. But I don't consider it to be an unreasonable expectation to see some form of accounts or evidence that might back up claims of such significant returns, particularly when £40,000 was to be invested.

Mr J has said how M was able to confidently explain his trading strategy. But again, there was no evidence seen or requested to back up those claims. And there appear to have been some concerning things said here. M appears to have told Mr J that he essentially never lost on a trade. That just doesn't seem realistic. I appreciate the explanation was that a trade would simply remain open until it made money. But I don't find that presented a reasonable explanation as to how M could trade 'risk free' for his clients. And to personally guarantee

any and all losses of sums invested by clients doesn't speak to a realistic investment proposal, where in any legitimate circumstances funds would be at risk.

Mr J has said he knew M wasn't the director of S, and that was because he had a CCJ against his name from an unpaid utility bill. But that isn't a reason for being unable to hold a directorship; someone can still be the director of a company and have a CCJ in their name. I wouldn't have necessarily expected Mr J to have this knowledge to hand at the time. But, given what I've said about carrying out proportionate checks on the investment and those connected to it, and that there were other warning signs the investment might not be all it was being held out to be, I find it fair and reasonable to suggest Mr J ought to have further considered what he was being told. An internet search, for example, quickly reveals that M was lying about reasons for not being a director. And, whilst Mr J might not have been aware of M's bankruptcy at the time, the information is discoverable online. Had the lie about the CCJ been tested at the time, it's quite possible the bankruptcy would have been revealed thereafter. M certainly would have had to address why he had lied to Mr J about not being a director.

Mr J has said he consulted a solicitor about the validity of the contracts, and so it seems he had the means and intent to seek assistance with verifying the legitimacy of M and S. It doesn't seem unreasonable to suggest that some of the more questionable information and features of the investment that had been presented to him might have been questioned too.

I do sympathise with Mr J. It's clear he's lost a significant sum of money to this cruel scam. I don't underestimate the impact this has had on him and his family, not only from a financial point of view, but emotionally and mentally too. And it's evident that many other people were also drawn into the scam. Mr J has referred to the outcomes of other victims' complaints. But I am only considering his complaint, on its individual merits, and taking account of the particular circumstances affecting him.

Putting things right

On Mr J's acceptance, Santander should:

- Reimburse 50% of Mr J's total loss (£20,000);
- Pay interest on that sum at 8% simple per year, calculated from the deadline date of our investigator's view (30 August 2023) until the date of settlement. I have selected that date because of my finding that it was, at the time of making its decision, fair and reasonable for Santander to delay answering Mr J's reimbursement claim. But, by the time it had our investigator's opinion, it had been presented with sufficient evidence and information, along with our outcome, for the claim to be decided.

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 J to accept or reject my decision before 12 December 2024.

Provisional decision

I've considered the relevant information about this complaint.

I'll look at any more comments and evidence that I get by 7 November 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr J complains that Santander UK Plc hasn't refunded him after he reported falling victim to an investment scam.

What happened

Mr J says he was introduced to an investment opportunity by an old friend. This was with a company I'll refer to as S and was to involve forex trading. Mr J's friend said he lived next door to the owner of S, and that he'd been invested for a while and was personally receiving good returns.

Mr J was interested and so met with the director of S in person where the opportunity was discussed further. Following this meeting, Mr J said he carried out some checks on S and its director, including reading reviews, looking on LinkedIn, and searching for S on Companies House. He was satisfied with what he found and decided to invest.

Mr J made two payments of £20,000 each to an account in S' name on 22 October 2021. Once the investment was established, he received regular updates and statements showing performance.

In June 2022 Mr J was contacted by the police. They informed him that he'd been the victim of a scam, through his investment with S. Mr J went on to report the scam to Santander and asked for its help.

Santander acknowledge Mr J's scam claim but never provided an answer on whether it would reimburse him or not. It said it was considering Mr J's claim alongside those of other consumers. It issued a final response to Mr J, in line with its complaints process, and he then brought the complaint to our service.

One of our investigator's recommended the complaint be upheld, with Santander to fully reimburse Mr J's loss. She was satisfied Mr J had fallen victim to a scam and that he was due a refund under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code.

Santander disagreed, principally on the basis that an outcome of the scam claim couldn't and shouldn't be determined because there was an ongoing police investigation. It also said that it would be necessary to undertake forensic accounting to determine exactly how any investor funds were used by S, which would then inform as to whether individuals had been scammed or not.

Santander also said that, aside from the aforementioned issues, the investigator hadn't taken account of the warnings it had given when the payments were being made, or whether Mr J had acted reasonably in proceeding with the payments.

Santander hasn't asked that an ombudsman review the complaint. But as a mutually agreeable outcome hasn't been reached the complaint has been passed to me to issue a decision.

What I've provisionally 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.

I'm reaching a different outcome to our investigator, though Santander will still need to refund part of Mr J's loss. I'll consider any further evidence and information provided to me by 7 November 2024. But unless anything changes my mind, my findings will be along the following lines.

In making my findings, I must consider the evidence that is available to me and use it to decide what I consider is more likely than not to have happened, on the balance of probabilities.

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 (2017) 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 a scam in most 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 I need to determine whether Mr J has been the victim of a scam, before going on to consider whether he ought to be refunded under the CRM 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 J it was unable to reach a decision on his scam claim as it was considering a large number of similarly affected customers. And our service is aware of many other claimants – not all Santander customers – also saying they fell victim to a scam with S. We are also aware that there is an ongoing police investigation into S.

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 J ought not be reimbursed under the CRM Code.

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

I ultimately have to decide whether it is fair and reasonable for Santander not to have upheld Mr J'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 J'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 J 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 J'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 specific in terms of Mr J's complaint. But, 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 S when it was operating legitimately (and possibly later started to scam people), or not bring charges against S or anyone connected to it. Santander also has some concerns over Mr J 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 J 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 J 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 J 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 J 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 J 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 J's intended purpose was when he sent the funds to S, what 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 S.

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

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

Mr J was instructed to make his payments to an account in S' name, which he did. And whilst those funds were received as intended, the evidence obtained in respect of that account (and others connected to S) (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.

S claimed to be operating a business in forex trading and investment. That required it to be regulated with the FCA, and it was not. S 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 S was telling investors. That dishonesty was undertaken in order to draw people into the scam.

The actions of the apparent owner of S 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 S, including the signing of the agreements being entered into.

He was not the director of S and, because of his bankruptcy, couldn't be. He was disqualified from holding such positions.

S' 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 S and the investment proposal. And so it has recognised there are indicators that S was operating as a scam.

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

Is Mr T 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 J ignore an effective warning?

Santander hasn't relied on this exception to reimbursement. But in its correspondence, it has referred to warnings given to Mr J 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 J.

Given Mr J was paying someone new and considering the value of the first payment (£20,000), I'm satisfied Santander ought to have held the payment so it could question Mr J 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.

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 J 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 J'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 J's loss.

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

I've thought about this point carefully and am reaching a different outcome to that of our investigator. I'm not persuaded Mr J did hold a reasonable basis for belief at the time.

I understand Mr J took a good deal of confidence from his friend who had already invested with S. It's unclear what evidence he saw of his friend receiving returns into his current account (as opposed to a statement of account with S). There's been no evidence provided to show anything of that nature. But, from Mr J's testimony, it seems he was ultimately persuaded to invest following his meeting with the owner of S. Mr J has explained how he was very convincing and able to answer his questions.

But I think there was enough going on to say Mr J ought fairly and reasonably to have significant cause to question what he was being told. This starts with the proposed returns on investment. Mr J was told he'd receive 3% per week on anything invested and that he could compound his returns. That adds up to an incredibly – and improbably – large return over the course of a year.

Mr J has said he knew that the return was very high, but that he trusted in the abilities of S and its owner. I can't say it was fair and reasonable for him to do so. Not without conducting further checks, at the least. This point is reinforced when considering that the owner of S said he gave his personal guarantee to secure all client funds, despite the inherent volatility and risk associated with forex trading. A promise which, even without substantial knowledge of the business, would presumably require a very large amount of capital.

I'm aware Mr J has said he did carry out checks on S and its owner. But I'm not persuaded these were proportionate to the risk involved – considering £40,000 was to be invested – or that they took account of the 'too good to be true' rate of returns.

Mr J said he checked for S on Companies House. As discussed earlier in this decision, S did appear there. But the business purpose didn't align at all, there were no accounts filed, and it was evident the owner wasn't listed as a director, despite how he presented himself.

Mr J has said he also found the owner on LinkedIn and the details seemed to match. I'm not sure what details Mr J is referring to exactly. I've searched that site myself, but the link Mr J provided doesn't work. From what I can glean, it appears to be linked to a different business to S, one involved in property rather than forex trading. Checking on that particular business further quickly reveals it was dissolved due to insolvency in 2015 and that the director (the person Mr J was dealing with) had been involved in numerous other dissolved and struck-off businesses.

Other information that is still discoverable lends no credence to the owner of S' claims, with little detail as to what he might have been involved in.

Finally, Mr J has spoken of taking confidence from international clients and reviews of S. But I've not seen evidence of any such reviews, what they said, or why it was reasonable to put significant faith in them.

I wouldn't necessarily expect Mr J to know to look for all of this information, or to necessarily challenge it, as a matter of course. But where there is an opportunity presented that comes across as highly improbable, as it did here, and where significant sums of money are being sent out of a customer's control, I find it's fair and reasonable to say a high level of due diligence is required in order to establish a reasonable basis for belief. As that didn't happen here, I find the exception to reimbursement applies. Which means Mr J and Santander will share responsibility for the loss.

Putting things right

Pending my consideration of any further evidence and arguments from either party, I intend to direct Santander to:

- *Reimburse 50% of Mr J's total loss (£20,000);*
- *Pay interest on that sum at 8% simple per year, calculated from the deadline date of our investigator's view (30 August 2023) until the date of settlement. I have selected that date because of my finding that it was, at the time of making its decision, fair and reasonable for Santander to delay answering Mr J's reimbursement claim. But, by the time it had our investigator's opinion, it had been presented with sufficient evidence and information, along with our outcome, for the claim to be decided.*

My provisional decision

I intend to uphold this complaint against Santander UK Plc.

Ben Murray
Ombudsman