

The complaint

Mr and Mrs W complain that Santander UK Plc won't refund the money they say was lost as a result of a scam.

What happened

Mr and Mrs W heard about an investment opportunity on the radio. The investment was through a company I'll refer to as B. B would purchase cars with investor's funds, then lease the cars out to individuals who might not otherwise be able to access a leased vehicle. Mr and Mrs W were told they would receive a monthly return and, on maturity, a lump sum of capital and interest.

Mr and Mrs W invested £28,000 on 31 July 2019 and a further £14,000 on 30 November 2020. Between August 2019 and December 2020, they received returns of £10,159.68.

Unfortunately, things didn't go according to plan. In February 2021, the regulator, the Financial Conduct Authority (FCA), imposed significant restrictions on B's partner business. An investigation had found that the company's liabilities exceeded its assets – it was 'balance sheet insolvent'. As a consequence, the FCA considered that the firm risked not meeting one of the conditions for its authorisation. B went into administration. The administrators made a referral to the Serious Fraud Office (SCO) based on what it had found, which resulted in B's directors being charged with fraud related offences. Court action is scheduled for 2026.

Mr and Mrs W believe the investment was a scam and, through a professional representative, raised a fraud claim with Santander.

Santander didn't agree to refund the loss. In its final response letter issued in September 2023, it said that Mr and Mrs W had a civil dispute with B.

Mr and Mrs W referred the complaint to our service. An investigator looked into Mr and Mrs W's complaint and said Santander should refund the outstanding loss. The Investigator explained that the evidence showed Mr and Mrs W's funds weren't used for their intended purpose and were obtained by dishonest deception, so their claim is covered by the Contingent Reimbursement Model Code (CRM Code). He said that under the CRM Code, Mr and Mrs W are entitled to a refund as they had a reasonable basis for believing the investment was legitimate when they made the payments.

Mr and Mrs W agreed with the Investigator's view. Santander did not respond by the deadline our Investigator set. Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.13, says, if a respondent (in this case Santander) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint. The complaint file was prepared for an ombudsman to consider.

Santander did then respond and explained that it had written to impacted customers like Mr and Mrs W to gain a wider understanding of their individual money movements. It suggested that some customers used more than one bank account for the purpose of

investing and receiving credits. Santander was concerned about refunding customers for losses suffered during the period covered by the CRM Code without reference to their overall financial position. It also highlighted that there is an alternative recovery option through the Financial Services Compensation Scheme, the FSCS. Santander said the FSCS scheme should be utilised, highlighting the CRM code was not designed to encompass this type of claim. It suggested that it is not able to settle this case now for all of these reasons and suggested that we should pause before making any further decisions. But I don't find it fair and reasonable to wait indefinitely and further delay making a decision on whether Mr and Mrs W should be reimbursed under the terms of the CRM Code.

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.

In broad terms, the starting position in law is that Santander are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

Are Mr and Mrs W 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, in all but a limited number of circumstances.

But the CRM Code does not apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods, services or digital content but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr and Mrs W made their payments meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr and Mrs W thought this purpose was legitimate
- The purpose the recipient (B) had in mind at the time of the payments and whether this was broadly in line with what Mr and Mrs W understood the purpose to be
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr and Mrs W were making the payments to B as part of an investment. Based on the evidence they had available at the time, there's nothing to suggest they didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose B had in mind and whether it was in line with what Mr and Mrs W thought.

In reaching an answer on what purpose B had in mind, I've considered the wider circumstances surrounding B, and the linked companies involved in the investment. The key information is:

- Following their investigation, the SFO said the defendants had provided false

information to investors, *“encouraging people to pay in whilst knowing that investments are not in reality backed up by the cars they had been promised”*.

- One of the linked companies (R) told the FCA that it owned 1,200 cars, but the number of charges registered at Companies House was 69. The cars purchased were supposed to be new cars, but DVLA checks showed that 55 cars appeared to be second-hand. The business model relied to a large extent on securing deep discounts on new vehicles and such discounts would not be available on second-hand cars. There were other discrepancies found between what R told the FCA and what the DVLA checks showed.
- Administrators of one of the linked companies found that it entered into 3,600 investment agreements with individuals, which should've had specific secured vehicles. But the company only had title to approximately 600 vehicles.
- There is no evidence that cars were purchased with Mr and Mrs W's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that Mr and Mrs W's funds weren't used for the intended purpose and that B obtained the funds through dishonest deception. So, I'm satisfied that Mr and Mrs W's payments meet the definition of an APP scam and are covered by the CRM Code.

The CRM Code says that Mr and Mrs W are entitled to a full refund unless Santander can establish that an exception to reimbursement applies. Santander haven't provided any evidence or arguments that an exception to reimbursement applies, but for completeness I have considered this point.

Does an exception to reimbursement apply?

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- 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 service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

** There are further exceptions outlined in the CRM Code, but they don't apply to this case.*

I'm satisfied that Mr and Mrs W had a reasonable basis for believing the investment was legitimate. I say this because B were an active company on Companies House, had positive reviews online and provided professional marketing material. I haven't seen any evidence that suggests there were warning signs that B wasn't offering a genuine investment when Mr and Mrs W made their payments in July 2019 and November 2020. From what I have seen, this was a sophisticated scam. The documentation received about the investment all appeared professional. The way Mr and Mrs W were told the investment would work isn't inherently problematic, and they weren't promised returns that were objectively too good to be true. I've not seen anything that should have led investors to believe this investment opportunity was not legitimate. Overall, I'm not persuaded there was anything that should have caused Mr and Mrs W concern or that Santander has established that they made the payments without a reasonable basis for believing that the investment was legitimate.

Santander haven't said that Mrs C ignored an effective warning and haven't evidenced that Mr and Mrs W were shown a warning when making their payments. So, I can't fairly conclude Mr and Mrs W ignored an effective warning and I'm not satisfied that Santander

can rely on this exception to reimbursement either.

I've carefully considered all of the evidence that's been provided in this complaint, including Santander's stance that it's not in a position to be able to respond currently. Having done so, I'm satisfied that I can fairly reach a decision that Mr and Mrs W's payments are covered by the CRM Code for the reasons explained above. I'm not persuaded I need to wait for any further updates from external parties or organisations, in this case, in order to reach my decision.

As I'm not satisfied that Santander can rely on an exception to reimbursement under the CRM Code, Mr and Mrs W are entitled to a full refund of £42,000. Santander can deduct from that refund the returns they received (which total £10,159.68), meaning the net refund amount should be £31,840.32.

I consider that Santander should pay 8% simple interest on the refund amount from 15 days after the date the directors were charged by the Serious Fraud Office, 19 January 2024, to the date of settlement. I say this as the CRM Code allows businesses 15 business days to make a decision on the claim after the outcome of an investigation is known.

Putting things right

To put things right I require Santander UK Plc to:

- Refund Mr and Mrs W £31,840.32 and
- Pay 8% simple interest per year on the refund, calculated from 15 business days after 19 January 2024 until the date of settlement. *

** If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs W how much it's taken off. It should also give Mr and Mrs W a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.*

Santander has suggested the FSCS should be used in the first instance rather than the CRM Code. It is not unusual for us to be asked to consider a complaint where there is or could be a parallel FSCS claim. But whether Santander has any responsibility for refunding the loss under the CRM Code it has signed up to is a distinct matter to whether FSCS protection may exist for customers. I am required to decide whether Santander was required to reimburse Mr and Mrs W under the terms of the CRM Code. For the reasons I've explained above, I am able to do this. In addition, Santander can ask Mr and Mrs W 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 the bank reimbursing them in line with the CRM Code's provisions.

The Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. More information about FSCS's position on claims submitted to FSCS against Raedex can be found here:

<https://www.fscs.org.uk/making-a-claim/failed-firms/raedex/>

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Mr and Mrs W are now complaining to us about in connection with the activities of Santander.

As I have determined that this complaint should be upheld Mr and Mrs W should know that as they will be recovering compensation from Santander, they cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount they recover from Santander they may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mr and Mrs W have already made a claim at FSCS in connection with this loss, and in the event the FSCS pays compensation, Mr and Mrs W are required to repay any further compensation they receive from their complaint against Santander, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS shares information with other public bodies can be found in our privacy notice here: <https://www.financial-ombudsman.org.uk/privacy-policy/consumer-privacy-notice>

There is also a possibility that, as a consequence of the administration of B and the prosecution of its directors, the authorities might recover funds to which Mr and Mrs W have a partial entitlement. If Santander reimburses them now, there is a risk they end up recovering more money than they lost to the scam. I don't know how likely it is that any funds will be recovered as part of those proceedings. But I agree that, if Santander has already paid a refund, it would not be reasonable for any further recovered funds to be returned to Mr and Mrs W. To avoid the risk of double recovery Santander is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

If Santander requires Mr and Mrs W to provide such an assignment, payment of the compensation awarded may be dependent upon provision of that undertaking. Santander may treat Mr and Mrs W's formal acceptance of the terms of my final decision as being sufficient for this purpose. Alternately, it would need to meet any costs in drawing up an undertaking of this type.

My final decision

My final decision is that I uphold this complaint against Santander UK Plc and require it to compensate Mr and Mrs W as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 27 January 2025.

Claire Marsh
Ombudsman