

## The complaint

Miss C complains that Santander UK Plc ('Santander') won't reimburse the funds she lost when she fell victim to a scam.

## What happened

Miss C says that in a casual conversation about investments her half-sister said that she had invested and received good returns through a brokerage company I'll refer to as A in this decision. Miss C was encouraged to attend an investment conference where A explained how she could utilise her savings to make money. She was provided with a brochure which explained how she could make money through cryptocurrency mining. While at the event, Miss C completed an enquiry form.

A few days later Miss C received a call from A and was directed to an account manager I'll refer to as T in my decision. Following an initial consultation, T sent Miss C a link to A's website via a messaging app. Miss C thought the website looked legitimate and paid an initial signing up fee of £223.67 to A. She was also advised to open an account at a cryptocurrency exchange to make the withdrawal of funds to her bank account easier.

On 20 September 2021 T introduced Miss C to a lucrative investment opportunity with a company I'll call H. Miss C made further payments in respect of this investment to A and directly to T as set out in the table below. The payments were made from three different accounts Miss C held with Santander.

Transaction	Date	Payee	Amount	Originating account
1	26/08/21	A	£223.67	Account 1
2	20/09/21	A	£3,741.50	Account 1
3	30/09/21	A	£248.51	Account 2
4	30/09/21	A	£1,010.21	Account 2
5	19/11/21	A	£132.65	Account 2
6	04/01/22	T	£7.87	Account 1
7	04/01/22	T	£685.38	Account 1
8	04/01/22	A	£787.89	Account 1
9	07/03/22	T	£188.00	Account 3
10	08/03/22	T	£156.72	Account 3
11	26/07/22	T	£8.57	Account 3
12	26/07/22	T	£428.30	Account 3

Between November 2021 and April 2022 Miss C received returns totalling close to £2,000. Miss C says that she was then unable to withdraw any further funds and that she is the victim of a scam. Her representative complained to Santander in May 2023.

Santander didn't agree to reimburse Miss C. It said she had a civil dispute for which it isn't responsible.

Miss C was unhappy with Santander's response and brought a complaint to this service.

#### *Our investigation so far*

The investigator who considered this complaint recommended that Santander reimburse 50% of payment two, plus interest. She set out detailed evidence to explain why she thought H was operating a scam and went on to consider Miss C's complaint under the CRM Code. Having done so, the investigator said that Santander could fairly rely on an exception to reimbursement in respect of all but payment two. But when payment two was made, Santander should have provided an effective warning but didn't. This meant that under the CRM Code, Santander should refund 50% of payment two.

Miss C didn't agree with the investigator's findings. She said that if Santander had intervened effectively when Miss C made payment two the scam would have been uncovered and her further loss prevented. Miss C also said that she attended a conference so had good reason to believe the investment opportunity was genuine. Finally, Miss C stressed that her relationship with T has been overstated – she didn't know the scammer personally but through a half-sister she had only been in contact with for around two years.

Santander said it still thought Miss C was involved in a civil dispute. It highlighted that the investment opportunity with H was introduced by a relative who was receiving a return on her investment, which would have impacted her decision to invest. Santander also said that between November 2021 and April 2022 Miss C received ten credits totalling £1,916.69. Given this, Santander said it couldn't agree that Miss C's funds weren't used for the purpose intended. If funds hadn't been used for the intended purpose, Santander said no funds would have been received.

I reviewed the complaint and contacted Santander to explain why I thought the payments to A related to a scam. Santander hasn't provided a substantive response. The Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.13, say that if a respondent (in this case Santander) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint. So, I'm going ahead and issuing my 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.

In deciding what's fair and reasonable, I'm 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 time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I will discuss this later in my decision.

### Is the CRM Code definition of an APP scam met?

I have considered whether Miss C's claim falls within the scope of the CRM Code, which defines an APP scam as:

*...a transfer of funds executed across Faster Payments...where:*

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

To decide whether Miss C is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Miss C thought this purpose was legitimate.
- The purpose the recipients (A and T) had in mind at the time of the payments, and whether this broadly aligned with what Miss C understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

From the evidence I have seen I'm satisfied that Miss C intended to invest in H through A.

I've gone on to consider the purpose A had in mind at the time it took the payments. After careful consideration, I'm not satisfied A intended to act in line with the purpose agreed with Miss C and will explain why.

Miss C believed that A's role was to facilitate the transfer of funds to H. I can't see any evidence that funds were paid from A's account to H. This means that Miss C's funds weren't used for the intended purpose. Other evidence from Companies House and the Insolvency Service, which has already been shared with Santander, supports a conclusion that A did not use Miss C's funds for the intended purpose.

H is widely accepted to be a scam with online warnings about it in multiple countries between March 2021 and August 2022. The chairman of the H group has been charged in the USA for conspiracy to commit fraud for his role in the scheme.

Other transfers were made directly to T. T worked for A and asked for payments to go to her directly, so it is more likely than not these funds also weren't used for the intended purpose. But as I am not making an award in respect of any payments to T, I don't need to consider this point further.

I don't consider that because Miss C's half-sister knew T this is a civil dispute as Santander has suggested. Miss C had no relationship with T.

### Should Miss C be reimbursed under the CRM Code?

Santander is a signatory to the CRM Code. The CRM Code requires Santander to reimburse Miss C in full if, at the time she made the payments, she was vulnerable as set out in it. If Miss C wasn't vulnerable, the CRM Code requires Santander to reimburse Miss C unless it can establish that it can rely on one of the listed exceptions set out in it.

I've thought very carefully about whether Miss C met the CRM Code definition of vulnerable at the time she made the payments. Whilst I have a lot of sympathy for Miss C, I've decided that she wasn't vulnerable as set out in the CRM Code.

The CRM Code says that someone is vulnerable – and so should receive a full refund of the amount lost in an APP scam if, *'it would not be reasonable to expect that Customer to have*

*protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered.'*

Miss C has provided a lot of evidence over a lengthy period of time. I can see that she suffered from low mood in 2019 and there are references to stress and bereavement in her records in August 2022 (and later), but this is after the scam transactions were made. Whilst I have sympathy with Miss C, I'm not persuaded the evidence she has provided demonstrates that at the time the payments were made she was unable to protect herself from the scam she fell victim to.

I've gone on to consider whether Santander can fairly rely on an exception to reimbursement. 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 services; and/or the person or business with whom they transacted was legitimate.
- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

It is for Santander to establish that an exception to reimbursement applies. Here, Santander hasn't considered Miss C's complaint under the code and didn't respond to any points made by the investigator in respect of its application. I've gone on to consider Santander's liability under the CRM Code based on the evidence I have.

#### *Did Miss C have a reasonable basis for belief?*

When considering whether Santander can fairly rely on the reasonable basis for belief exception to reimbursement, I've looked at the evidence that was available to Miss C at the time she made the payments.

Taking into account all of the circumstances of this case, including the characteristics of Miss C and the complexity of the scam, I think Santander can fairly rely on an exception to reimbursement set out in the CRM Code in this case. I'm not satisfied that Miss C had a reasonable basis for believing the payments were for genuine services. I say this because:

- Miss C has said that she was encouraged to attend a conference where A explained how funds could be utilised more effectively than if they remained in the bank. I haven't seen any evidence to support this though or any documentation from A.
- Cryptocurrency would be bought by A using its 'concierge service' and A were 'champions' for the scheme with H. But A offered educational services and wasn't a broker so it's hard to see how making payments to A to buy cryptocurrency in relation to a scheme with H made sense.
- Miss C says her half-sister told her she had received good returns from H, but she didn't see any evidence to confirm this.
- Miss C believed she would receive daily rewards of 0.5 to 1% per day which is too good to be true. She has said that she was advised this was possible because the founders of H were 'Angel Investors' who made investments in start-ups and used the profits to pay investors. I don't find this explanation to be persuasive and I haven't seen any evidence that suggests such rewards were achievable.
- Some of the payments were made to T's personal account rather than to A. Legitimate investments don't work in this way and I can't see that a plausible explanation has been provided for this.

- I have seen a message in which a representative of A says that if there are any fraud concerns from the bank customers should say they were buying an educational package. But this wasn't the case and I consider Miss C ought reasonably to have had concerns about being asked to say this.
- I have only been provided with very limited chat messages, but they don't appear to be professional.

*Should Santander have provided effective warnings or intervened further?*

The CRM Code also sets out standards that firms are required to meet. Where these are not met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement can be fairly applied (as is the case here). Those requirements include the provision of what the Code defines as an "Effective Warning" when a firm identifies an APP scam risk in relation to a payment.

The CRM Code requires that warnings be both specific to the scam risk identified and impactful – to positively affect a customer's decision-making in such a way that the likelihood of an APP scam succeeding is reduced. The CRM Code goes on to say this should include steps to ensure that the customer can reasonably understand the consequences of continuing with an irrevocable payment.

Under the CRM Code, Santander is only expected to provide an effective warning when it identifies an APP scam risk in a payment journey. I'm satisfied that Santander should have recognised this risk when Miss C made payment two in the table above given its value and her usual account activity. The other transactions were relatively low value and I'm not persuaded the pattern of them was concerning.

Santander hasn't provided any warnings, so it hasn't demonstrated that Miss C ignored an effective warning.

I consider that a proportionate response to the risk posed by payment two was an on-screen warning rather than human intervention in the form of a conversation. So, I don't agree with Miss C that the scam could have been prevented at this point and her further loss prevented.

Overall, whilst I'm sorry to hear about Miss C's loss, I can only fairly ask Santander to reimburse her in part.

**My final decision**

I uphold this complaint and require Santander UK Plc to:

- Pay Miss C £1,870.75; and
- Pay interest on the above amount at the rate of 8% simple per year from the date Santander made its decision not to reimburse under the CRM Code to the date of settlement.

If Santander UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss C how much it has taken off. It should also give Miss C a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 17 April 2025.

Jay Hadfield  
**Ombudsman**