

The complaint

Mr P complains that Santander UK Plc won't reimburse him after he lost money to an investment – that he now considers to have been a scam.

Mr P has been represented in bringing his complaint to our service by a family member. But for ease of reference, I'll refer to all submissions as being made by Mr P directly.

What happened

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Mr P has explained that he had savings that had recently matured and was therefore looking for somewhere to place these funds that would allow for an improved interest rate. Mr P believes he first came across an investment advertisement on a social media platform, and made contact on this basis.

Mr P discussed the opportunity with an individual working at the firm that I'll refer to as A, both by phone and email in further detail. He was advised that the offer was a private bond, whereby Mr P's funds would be used to purchase stock and profits would be shared with Mr P. He was advised he could expect to receive around 7.8%-13.12% returns on his initial investment.

Mr P found A on the Financial Conduct Authority's (FCA) website which reassured him that this was a genuine opportunity. On this basis, in October 2023, he contacted Santander to arrange to make a payment of £85,000 to the firm.

When on the phone to Santander, his payment flagged for further security checks. During the call, Mr P explained why he was making the payment in question and how he had corresponded so far with A. The advisor he spoke to had some concerns about the payment Mr P was making, on the basis that Mr P had found the advertisement on a social media platform and that the contact details he had corresponded with A on weren't those listed on the FCA website. The advisor therefore suggested Mr P call the firm on the genuine number listed on the FCA website and that he would call him back. The advisor also contacted A at this point and was advised by the individual on the line that this was a genuine advertisement it was offering.

On this basis, the advisor told Mr P that this was a genuinely listed firm on the FCA register and Mr P authorised the payment to be made.

A few months later, Mr P mentioned the investment to a family member who was immediately concerned. He reviewed A online and found a concerning news article about its

legitimacy. On this basis Mr P contacted Santander, believing he'd been the victim of a scam. He also contacted the Police and the FCA.

Santander considered Mr P's claim but declined to reimburse him. It said it considered this to be a private civil dispute between Mr P and A.

Mr P remained unhappy and referred his complaint to our service. An investigator considered his complaint and upheld it. He considered there was sufficient evidence that the opportunity presented to Mr P was a scam. He considered Mr P's complaint under the Contingent Reimbursement Model (CRM) Code and didn't think there was any reason under the Code why Mr P shouldn't be reimbursed.

Santander disagreed with the investigator's view. It maintained that, as Mr P made a payment to a genuinely FCA authorised company that has had its permissions revoked, this was a civil issue between Mr P and A. It stated it would need to see concrete evidence that Mr P's money had been used for fraudulent purposes and charges brought against A.

As Santander disagreed with the investigator's view, 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 Code (the CRM Code). This requires firms to reimburse customers who have been the victim 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.

Has Mr P been the victim of a scam, as defined in the CRM Code and is it appropriate to determine his complaint now?

I am aware there is an ongoing investigation. Under certain circumstances, it might be appropriate to wait for it to conclude.

But I am conscious that, when deciding whether or not a criminal prosecution will take place, the Crown Prosecution Service considers whether it's likely a jury will decide that guilt has been demonstrated beyond all reasonable doubt. That's a higher standard of proof 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 P'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 P 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 P'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.

I've also taken into account that, as A is an active firm listed on Companies House, there may be other avenues Mr P can take to recover his funds. I don't know how likely it is that Mr P's funds will be recovered as part of ongoing proceedings. But I consider it fair that, if Santander has already paid a refund, it would not be fair or reasonable for those recovered funds to be returned to Mr P as well. Santander can ask Mr P to undertake to transfer to it any rights he may have to recovery elsewhere, but I'm not persuaded that this is a reasonable barrier to us considering this complaint, or for reimbursement to Mr P in line with the CRM Code's provisions.

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 P has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose he intended for the payment was legitimate, whether the purposes he and A intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of A.

From what I've seen and what Mr P has told us, I'm satisfied Mr P made the payments with the intention of investing in purchasing stock for A to resell at a profit.

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

I've seen information concerning the investigation of A by the regulator, the FCA. This shows that the FCA has reviewed A's accounts, which show receipt of funds followed by substantial payments being made out on the same day or shortly after and that there are concerns about what these payments relate to. It also appears that, while investors were advised that A uses 'FCA regulated escrow providers' to hold funds, this was not true. Additionally, the Police have recently made multiple arrests, relating to fraud and money laundering charges.

I therefore think the evidence available suggests that both the FCA and Police have concerns that Mr P's funds were not used as advised by A.

It seems both Santander and Mr P were reassured that this was a genuine investment based on A being FCA regulated. However the evidence I've seen shows that while A was regulated for credit broking and carrying out regulated activities, this is not the service that was being provided to Mr P. Additionally, the FCA has provided evidence that supports that A made several contradictory statements that it wasn't conducting unregulated financial services, as well as other misrepresentations about how the firm was run, who was running A and what profits and losses it was making. It also advised that A confirmed it has not used its credit broking permission that it requested regulation to offer.

Having considered all the evidence holistically, I think there is sufficient evidence here that A was not providing a legitimate investment opportunity. It was misleading the FCA in respect of the services it was offering customers, while not using the regulatory permissions it had applied for and was then moving funds on in a way that has raised concerns with both the Police and the FCA. I therefore don't think it's necessary to wait until the outcome of the police investigation to reach a fair and reasonable decision.

Is Mr P 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 P ignore an effective warning?

I've listened to the call Mr P had with Santander and I think Santander acted positively by identifying that Mr P had come across this opportunity on a riskier platform and that he was corresponding with A on contact details not listed on the FCA register – and therefore called A to question this.

Realistically I don't think there's much more I would have expected Santander to have done during this call. I accept that there were concerning reports online at the time Mr P made the payment, but I've also had to bear in mind that at the time, the company was subject to FCA regulation and while this didn't cover the service Mr P was being offered, the advisor was not providing financial advice and I wouldn't necessarily expect them to have a full understanding of what regulations would be required for different financial products. I can understand why the advisor would have been reassured on the investment based on A being on the FCA register and having spoken to A on the phone.

However, a reimbursement under the Code is not reliant on the firm's ability to identify and prevent a scam, if the customer is also found to not be at fault for their losses. I've therefore gone on to consider whether Mr P acted reasonably in the circumstances.

Did Mr P have a reasonable basis for belief?

Having considered everything holistically, I don't consider Mr P was unreasonable in not identifying this was a scam, largely for the same reasons that I wouldn't have expected Santander to uncover this. I appreciate there was a negative article online at the time he made this payment, but I think this would have been superseded by A being apparently regulated by a financial body. Mr P has explained he spent hours on the phone with A discussing the bond and I can appreciate why this would have provided Mr P with assurances of the firm's legitimacy. Mr P is very clear in his calls with Santander that he appreciates them looking after his money as he wouldn't want to lose it - and I can understand why, having discussed the investment with advisors and been reassured that it is a legitimate company, he would have had no concerns outside of those generally linked to investments.

I've also thought about the perceived returns Mr P was being offered. Mr P explained in the call with Santander that these were higher than being offered elsewhere, but I don't think they were so unrealistic that this should have rang alarm bells with Mr P that something was amiss.

Overall, for the reasons I've explained above, I think it is fair and reasonable for Santander to fully reimburse Mr P under the CRM Code.

My final decision

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

- Refund Mr P in full the payment he made towards the scam (£85,000)
- Apply 8% simple interest, from the time it declined Mr P's claim under the CRM Code until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 January 2025.

Kirsty Upton
Ombudsman