

The complaint

Mr H complains Santander UK Plc ('Santander') hasn't reimbursed him following an authorised push payment ('APP') investment scam he fell victim to. He says Santander should reimburse him for the money he lost.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

In or around November 2022, Mr H was introduced to an investment company which I'll refer to as 'V'. Mr H was introduced to V by a friend who had already invested with V and had advised Mr H that their investment was seemingly doing well.

In January 2023, Mr H touched base with his friend about V again. Mr H says he was shown their account and trading platform and how the investment had performed over the last couple of months. Mr H received brochures and marketing materials about V. Mr H was interested in investing with V and he subsequently attended an 'in-person' event in February 2023 where he got to meet the founders of V.

Happy with the event and with what he had seen and heard, and happy with how things were seemingly progressing with other people's investments, Mr H decided to invest. Mr H set up an account with V and believing everything to be genuine, made a payment for £100,000 on 20 February 2023. This payment went from his account with Santander to V's business account. Mr H received confirmation that his funds had been received and had been deposited into V's Financial Conduct Authority ('FCA') regulated broker's account.

Shortly after, on 18 May 2023, V emailed its investors. V advised that it had been working with the FCA and the FCA had requested information from V on a number of details. V explained it was working with its lawyers to ensure it provided everything the FCA needed. V explained as part of the process it had been asked to temporarily pause any trading until the situation was resolved. In June 2023, a message was added to V's website saying V had been in communication with the FCA since 18 April 2023 and if investors had any queries, they needed to contact the FCA. Mr H contacted the FCA and was told it was carrying out an investigation into V.

Ultimately, Mr H wasn't able to retrieve any of the funds he had invested or any profits he thought he had made from V.

Mr H reported the matter to Santander in October 2023, to try and recover his funds or be reimbursed his loss under the Lending Standards Board ('LSB') Contingent Reimbursement Model Code ('CRM Code'). This was a voluntary code that Santander was a signatory of. The CRM Code required firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances.

Santander logged Mr H's fraud claim. It then wrote out to Mr H advising that its investigation was taking longer than it expected and Mr H could refer the matter to our service.

Mr H pursued the matter with Santander and received a final response on 19 January 2024. With regards to Mr H's fraud claim, Santander advised that within the CRM Code there was a provision (R3(1)(c)) which stated that if a case is subject to investigation by a statutory body and the outcome might reasonably inform a firm's decision, then a firm may wait for the outcome of that investigation. Santander considered that as there was an ongoing FCA investigation, then once that investigation was completed it would then make a decision on the possible next steps forward for Mr H's fraud claim.

Santander also recognised that its level of service fell below what it expected, and it advised it was prepared to make an offer of compensation in this regard but noted that Mr H wasn't interested in this - so it advised it wouldn't take any further action.

Unhappy with Santander's response in not accepting his fraud claim, Mr H referred the matter to our service.

One of our Investigators looked into the matter and upheld Mr H's complaint. In short, they explained that they did not think it was fair for Santander to wait for the FCA's investigation into V to be concluded, before making a reimbursement decision under the CRM Code. Having reviewed the complaint, they felt it was more likely V was operating as a scam – and this was based on a number of factors. They therefore assessed the complaint under the CRM Code and did not think any exception to reimbursement applied.

They therefore recommended a full refund of the £100,000 payment Mr H made, as well as 8% simple interest from 15 days after Mr H raised his fraud claim with Santander to the date of settlement.

Mr H accepted the findings, however Santander did not, as it considered it wasn't in a position to provide a response.

Our Investigator then let Mr H know that in relation to the additional compensatory interest they had recommended within their view, they were minded to say it should be applicable from the date of their view and not from the date Mr H raised the fraud claim with Santander. And this was because Santander wouldn't have had the same information available to it that our service had, to conclude it was a scam. But they believed their view had sufficient information for Santander to conclude that Mr H had been the victim of a scam and that it wasn't necessary to wait for the outcome of any ongoing investigations. So, Santander could have reimbursed Mr H at that point, and in not doing so Mr H was unfairly being deprived of the use of those funds from that point.

Mr H disagreed with this point and considered there was enough information for Santander to conclude it was an APP scam earlier on.

As an informal agreement could not be reached, the complaint has been passed 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Santander was a signatory to the CRM Code. It required firms to reimburse victims of APP scams in all but a limited number of circumstances.

The main point of dispute here is whether V was operating as a scam or not. Santander are relying on R3(1)(c) of the CRM Code to defer making a decision on this point.

R3(1)(c) says:

"...If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision."

So, I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the FCA investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

In order to determine Mr H's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mr H was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that Mr H first raised his claim with Santander in October 2023, and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr H an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm aware the above processes involved with the FCA investigation might result in some recoveries for V's investors; in order to avoid the risk of double recovery, I think Santander would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr H under those processes in respect of this investment before paying anything I might award to him on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the ongoing FCA investigation for me to fairly reach a decision on whether Santander should reimburse Mr H under the provisions of the CRM Code.

In order to reach a decision, I've considered the definition of an APP scam under the CRM Code. Under DS1(2) an APP scam is defined as:

"...a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”

DS2(2)(b) explains that 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”

Of particular relevance here is whether Mr H transferred funds to V for what he believed to be legitimate purposes, but which were, in fact, fraudulent.

It's evident that V had some features that gave it the impression of operating legitimately. There are identifiable individuals associated with V who held in-person and online events to promote the investment. And many people who lost money had been introduced to the scheme through personal recommendations (sometimes by people who'd successfully withdrawn significant 'profits' from the scheme).

There is also evidence that some of the money that was received personally by the founding individuals at V did end up with a foreign exchange ('Forex') platform (which wasn't FCA regulated but was part of a group of companies – of which one was FCA regulated). It also appears that some funds sent to V's bank account were converted into cryptocurrency and sent to the Forex platform.

However, I've found the following facts to be persuasive evidence that V was operating as a scam:

- We are now aware that V's claims of being at least in the process of being regulated with relevant bodies such as the FCA in the UK and the CSSF in Luxembourg are false.
- V's account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with an FCA authorised trading exchange and that it was regulated.
- Approximately half of the funds sent to the two founding individuals of V was potentially used for the intended purpose of Forex trading. Whereas Mr H sent funds to V with the understanding they would immediately be moved to an FCA regulated trading account to be used in Forex trading, as was Mr H's understanding of his agreement with V and as he was told in communication following his investment deposit. But this didn't happen.
- Of the investors' funds that were sent to V's business account, these were either sent to a cryptocurrency exchange platform or paid to other investors as withdrawals. Investors were led to believe they were investing with a regulated entity and that their funds would be deposited in a regulated trading account. It wasn't advertised to investors that their funds would be moved/invested into unregulated cryptocurrency. Furthermore, approximately 20% of the funds moved to the cryptocurrency exchange platform weren't subsequently forwarded to the Forex trading account.

- There is no evidence to substantiate V's claims around the profits they say they were able to generate via Forex trading.
- The returns from the Forex platform are significantly less than the returns paid to investors, suggesting returns were funded using other investors' money and weren't profits made from investing.

Taking into account all of the above, I'm satisfied, on the balance of probabilities, that the money that was sent to V was not used for its intended purpose. The evidence suggests that Mr H wasn't involved in a failed investment but a scam.

Is Mr H entitled to reimbursement under the CRM Code?

I've considered whether Santander should reimburse Mr H under the provisions of the CRM Code. There are generally two exceptions to reimbursement:

- Mr H made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or V was legitimate.
- Mr H ignored what the CRM Code deems to be an 'Effective Warning'

And importantly, when assessing whether it can establish these things, Santander must consider whether they would have had a 'material effect on preventing the APP scam'.

I have considered whether Mr H had a reasonable basis to believe V was legitimate and was providing a genuine investment product.

In doing so, I have given careful consideration as to how Mr H was introduced to V. I find this to be an important factor when considering whether Mr H held a reasonable basis of belief when making payments to V. Mr H was introduced to V by a friend who had been investing through V already. I think this would have been compelling for Mr H. And it is understandable that he placed weight on what he was seeing and hearing about V from his friend who had already invested and had also seemingly made some good returns. Mr H then touched base with his friend a couple of months later and all seemed to be going well. This led Mr H to become further interested in investing with V, and he received supporting / promotional materials about V and attended an in-person event – meeting the founders of V. And Mr H has said he was assured that it was regulated by the relevant bodies.

When I consider this, and think about the sophistication of this scam, so being introduced to V by a friend who had already invested with V, the marketing materials about V, the online videos of seminars, the in-person event Mr H attended, the account opening process, V's website, the client portal and the ability to track supposed investments, I can understand why Mr H felt the investment was a genuine one at the time.

I do accept some of the claims made by V about the returns it could generate seem unlikely. But, and importantly, I have to weigh up and also consider this alongside what Mr H had been told by his friend about their investment with V and what he had seen his friend and others (when at the in-person event) seemingly get in returns. So, I think the sophisticated aspects of the scam, particularly with Mr H being introduced to V by a friend and the in-person event he attended would have reassured him and outweigh the concerns that he perhaps ought to have had about the returns being claimed.

On balance, I think there was enough to reasonably convince Mr H at the time that this was a genuine investment company. With this in mind, I don't think Mr H made the payments without a reasonable basis of belief that V and the investment itself was genuine.

Santander has not provided any evidence, within its submissions to this service, that it warned Mr H before he went ahead with the payments, so it cannot demonstrate he ignored any 'Effective Warnings' and therefore cannot rely on that exception to reimbursement.

I appreciate Santander hasn't provided any evidence in relation to any warnings it may have provided Mr H at the time he was making the payments – due to it considering it should await the outcome of the FCA investigation. But it had the opportunity to provide its submissions about the payment journey steps Mr H undertook when the complaint was with our service and didn't.

I note Mr H has provided a copy of the call recording he obtained from Santander – and it was a call he had with Santander when he made the £100,000 payment. I have listened to this call. While the Santander adviser seeks out the reason for the payment, they don't go on to provide what the CRM Code deems as an 'effective warning'. They establish that V itself isn't FCA regulated with Mr H advising this was because it was regulated in Luxembourg. And then the adviser does provide some warnings, but they are in relation to multiple scams, so focusing on where Mr H obtained the account details, asking whether Mr H has been advised to mislead or lie to the bank or whether he was being asked to move money as a result of a safe account scam or as part of an investigation. So, the warning wasn't specific and tailored to the potential scam Mr H was falling victim to – an investment scam.

I am also mindful the CRM Code explains that a firm, in assessing whether an exception to reimbursement applies such as ignoring an effective warning, has to take into account whether it would have had a 'material effect on preventing the APP scam'.

Here, Mr H had no reason to believe that V wasn't a genuine investment company at the time. So even if Santander were to have provided Mr H with a relevant or tailored warning about investment scams – I think it is fair to say it wouldn't have had a material effect on preventing the scam, such was his belief in V and that things were legitimate. So, I do not think an exception to reimbursement can be applied for this reason in any event.

Overall, I do not consider it necessary to await the outcome of the FCA investigations into V and any subsequent proceedings. I am satisfied, based on the evidence available, that Mr H was more likely than not the victim of an APP scam. And his fraud claim is therefore covered by the provisions of the CRM Code. I'm also satisfied no exceptions to reimbursement under the CRM Code apply. So, it follows that I'm satisfied Santander should reimburse Mr H under the provisions of the CRM Code. And Santander is entitled to take, if it so wishes, an assignment of the rights to all future distributions to Mr H under the processes relating to the FCA investigation and any potential compensation that may be returned to victims.

In relation to compensatory interest, I think it should be paid from the date our Investigator gave their view on this complaint (9 January 2025). I'm satisfied that the information disclosed in that view was sufficient for Santander to conclude that Mr H had been the victim of a scam and that it wasn't necessary to wait for the outcome of any ongoing investigations.

I appreciate Mr H disagrees on this point and feels there was enough information for Santander to conclude it was a scam at an earlier point.

Our power to award interest comes from s229(8) of the Financial Services and Markets Act 2000. DISP 3.7 explains the types of awards (and directions) we may make. The power is a discretionary one and we decide cases on a fair and reasonable basis.

Our service – through our inquisitorial remit – was able to obtain third party information which we've subsequently relied on when deciding that it is more likely than not V was operating an APP scam. Santander would not have been able to obtain the same information that our service could. It would not have been able to contact third parties' or obtain the data that was needed from other financial institutions, such as beneficiary statements showing how V used investors' funds. So, Santander wasn't in a position to conclude an APP scam had taken place at the time Mr H made his scam claim. But the information our service was able to obtain and the findings subsequently reached as a result of that information, was to my mind sufficient for Santander to conclude Mr H had been the victim of a scam and that there were no grounds to refuse reimbursement under the CRM Code.

I do appreciate that there may be some victims who have already received a refund from other banking providers. So, I can empathise with Mr H who is clearly frustrated at the length of time things are taking and is doing his utmost to ensure his funds are reimbursed. I can't comment on why a firm took any action it did. I can only consider the complaint before me. And here, I consider it fair and reasonable to award compensatory interest from the date of the Investigator's view for the reasons I've mentioned above.

Putting things right

I uphold this complaint. Santander UK Plc should pay Mr H:

- £100,000 he lost to the scam orchestrated by V; and
- 8% simple interest on that amount from 9 January 2025 to the date of settlement.

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 July 2025.

Matthew Horner
Ombudsman