

## 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.

## What happened

On 20 January 2025, I issued my provisional decision on this complaint. I wanted to give both parties a chance to provide any more evidence and arguments before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

*Mr P has explained that he was introduced to an investment opportunity, that I'll refer to as S, when providing a service in his area of profession to S' main trader/director. Mr P has explained that this professional relationship lasted for around five months, during which time S' director told Mr P about the investment. He said he had produced an algorithmic way of testing trades and stock movements and could make accurate trades based on this information. Mr P has explained he watched S' director close trades and making thousands of pounds. Mr P was also aware of others in a local sports club who had invested and it was Mr P's understanding that their investments were performing well.*

*On this basis Mr P was interested in also investing. He says he received a trading pack detailing how the investment worked, which further reassured him this was a legitimate opportunity. In April 2022 he made his first payment towards the investment for £10,100 to account details provided by S' director. He then sent a further £10,011 the following month. Both payments were made to a business account held in an account name different to S, which he understood was a payments company who would release funds to S. When being provided with the account details, Mr P was told that S was in the process of becoming FCA registered but that as the process was ongoing, to not tell the bank that payments being made were for an investment, as this could result in his and S' accounts being frozen. Mr S was directed to select 'paying for goods and services' as the payment purpose instead, which was therefore what he did. As a result, Mr P received the following warning from Santander:*

### ***'Could this be a payment redirection scam?***

*Criminals often attempt to intercept emails and send you false bank account details. These emails often look genuine.*

*Please take a minute to double-check the payment details by phone or in person – this could save your money from being stolen.*

***If you're at all nervous, or you've been told to choose this payment reason, please cancel and call us now.'***

*When making the second payment to S, the payment was identified by Santander's fraud detection systems and Mr P was contacted by iSMS to ensure this was a genuine payment. Within this message, Santander stated 'if anyone's told you which payment reason to choose, or you've been told not to tell us the truth about this payment, it's likely to be a*

*scam. If this has happened don't continue and call us immediately.' It also stated 'If this payment is for an investment, cryptocurrency or bond make sure you have thoroughly researched the company or person you're dealing with. This includes checking the FCA register and ScamSmart tool on the FCA website, on the day you make the payment.'*

*Mr P has explained that he received weekly reports confirming how his investment was performing. However, he then received contact from the Police advising S was being investigated.*

*Mr P complained to Santander, but Santander advised the claim was still under review and was unable to provide an answer at that time to his claim. Mr P remained unhappy and referred his complaint to our service.*

*An investigator considered the complaint and upheld it. She said on balance this was a scam and covered by the Contingent Reimbursement Model (CRM) Code and that none of the exclusions applied – so Santander should reimburse Mr P in full.*

*Santander said, to summarise, that it was premature to reach a decision on whether these payments fell within scope of the CRM Code while there is an active and ongoing police investigation. It questioned what evidence our service had received from the bank and argued that it wouldn't be fair to rely on evidence that wasn't available to it.*

*Santander also considered that even if the Code could be applied, the investigator has failed to consider Mr P's own contribution to the losses he suffered, where it considers red flags were apparent from the start. It also raised that as Mr P selected an incorrect payment purpose when making the payments, Santander was unable to provide him with a relevant warning.*

*As Santander didn't agree with the investigator's view, the complaint has been referred to me for 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.*

*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 (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.

*Can Santander delay making a decision under the CRM Code?*

*In its more recent submissions, Santander has referred to exception R3(1)(c) as a reason for us to not yet reach an outcome on this complaint. This exception states that 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.*

*While this exception provides a reason why firms may delay providing a claim outcome under the CRM Code, it doesn't impact that customer's right to refer the complaint to our service – and similarly it doesn't impact our service's ability to provide a complaint outcome when we consider we have sufficient evidence to do so.*

*I've therefore gone on to consider below whether we do have enough evidence to proceed at this time on Mr P's complaint.*

*Is it appropriate to determine Mr P's complaint now?*

*I ultimately have to decide whether it is fair and reasonable for Santander not to have yet given an answer on Mr P'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 – 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.*

*Santander has raised concerns that, at present, it is unclear if any funds remain in the account where Mr P's payments were made to and if there are, this may impact the extent of his losses and complicate the recovery position.*

*I don't know how likely it is that any funds will be recovered as part of ongoing proceedings. But I agree 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, so I'm not persuaded that this is a reasonable barrier to it reimbursing him in line with the CRM Code's provisions.*

*For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the police investigation or potential related court case for me to reach a fair and reasonable decision.*

*Has Mr P been the victim of a scam, as defined in the CRM Code?*

*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 payments was legitimate, whether the purposes he and S intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of S.*

*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 a hedge fund. He thought his funds would be used by S to trade and that he would receive returns on his investment.*

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

*Mr P made his payments to an account held in another business' name. I've reviewed beneficiary statements for this account and while I can't share the details for data protection reasons, the statements do not suggest that legitimate investment activity was being carried out by S at the time Mr P made the relevant transactions. Whilst there is evidence S initially did carry out trades, it doesn't necessarily follow that it was a legitimate enterprise. S and its linked companies were not authorised by the FCA to carry out trading, so its operations clearly lacked an important element of legitimacy; it was required to be authorised to do the activity it was carrying out and it wasn't.*

*Similarly to this point, Santander has questioned how our service can reach a view on whether its customers were the victims of scams until it can be established what specific payments were made towards trades. However, for the reasons I've explained above (and other points I'll go on to cover) the overall position here is that this wasn't a legitimate investment – and Mr P's (and other investors' funds) weren't being traded in the manner they believed they were. So, in essence, regardless of where Mr P's 'specific' payment went, the overall firm and its investment model here was illegitimate - and Mr P had been deceived on this point.*

*Further concerns centre around the owner of S (who was bankrupt at the time). From the paperwork provided to consumers, he appears to have "personally guaranteed" the investments (despite forex which the contract refers to being a high-risk investment and him never being in a financial position to do so). He also signed contracts on behalf of S despite not officially being listed as the director of the business. He appears to have acted as a 'shadow director', when he would've been disqualified as a director in his own right due to his bankruptcy. Furthermore, S was listed as an 'IT consultancy' business on Companies' House and not a financial services firm.*

*I've also noted that, when highlighting its concerns about Mr P's own contributions towards his losses, Santander has also raised several elements of the scam that ought to have caused concern to Mr P. It's referred to Mr P being told to not disclose that this payment was for an investment, to avoid his account being frozen due to S' lack of regulation. So it seems Santander is also aware of various behaviours of S' that indicate the 'investment' was in fact a scam.*

*So based on the above, along with the weight of testimony we have seen from other consumers who invested in S, I am satisfied that it is more likely S was not acting legitimately, since its intentions did not align with Mr P's intentions, and I am satisfied that S was dishonest in this regard. It follows that I'm satisfied Mr P was the victim of a scam.*

*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 considered the warning referenced earlier in my decision, that Santander has said it provided to Mr P. I appreciate Mr P was guided on how to answer the question on the purpose for payment, which has resulted in Santander providing a warning relating to payments for goods and services, rather than investments. While Mr P has therefore ultimately impacted Santander's ability to provide an automated warning that is effective under the CRM Code (as the warning he saw doesn't highlight the key hallmarks of investment scams) I've also taken into account that an effective warning is a minimum requirement expected of firms under the CRM Code. In this case, the payments Mr P made were the highest value payments on his account in the past 12 months. I therefore think Santander ought also to have contacted Mr P prior to the payments being made, to better understand the payments he was making and to ensure he wasn't at risk of financial harm from fraud.*

*As Mr P had been given no further cover story on these payments, I think Santander could have done more to establish the true payment purpose here and I'm therefore not satisfied that Santander can rely on this exception of the Code as a reason to not reimburse Mr P.*

*Did Mr P have a reasonable basis for belief?*

*I've considered Santander's assertion that Mr P proceeded with this scam, despite red flags from the start and whether he acted reasonably in light of the circumstances. Having*

*considered everything holistically, while I'm sorry to disappoint Mr P, I think it's fair for Santander to rely on this exception of the Code as reason to not provide a full reimbursement. I appreciate this will come as a disappointment to Mr P, so I'd like to explain why.*

*I appreciate Mr P had personally met with the director of S and seen him appearing to make live trades – and I don't doubt this would have been highly persuasive to Mr P when deciding whether to proceed himself with payments. However I've thought about the information Mr P was provided with from this point onwards – that he was asked to make a payment to an account not in S' name and that he was told to be dishonest with his bank about the purpose for payment. While Mr P had been told the payment was being made to a payments account, I can't see he was provided with any evidence of this – and from researching the company online, they are listed as being linked to wholesale. Additionally, while Mr P saw what appeared to be the director making successful trades, Mr P didn't know anyone on a personal level that had previously traded successfully through S. He therefore was, in effect, putting full trust in an individual that he'd met in a non-financial setting to invest large sums on his behalf. While Mr P has said he was given a trading pack which reassured him on the legitimacy of the investment, he doesn't appear to have completed any checks independently on S.*

*Additionally, while the warnings provided by Santander weren't relevant to the scam Mr P fell victim to, they still did on two occasions warn Mr P to not proceed with the payment if he'd been told what payment purpose to select. And while Mr P has said that had Santander advised Mr P to fully check the regulations, he would never have transferred funds to S, Mr P has accepted he was aware already that S wasn't FCA registered. In addition, when making the second payment to S, Santander's iSMS warning did advise him to check the FCA register.*

*Additionally, Mr P was told he would be receiving 3-6% interest weekly on payments. This is a significant sum to be receiving and in the absence of knowing anyone personally that had successfully invested already, I think this ought to have been another red flag to Mr P that something may be amiss.*

*Overall, I appreciate this is a finely balanced case and I accept that these red flags in isolation may have been overlooked. But when combined, I think there was enough going on here that Mr P ought to have had some concerns about the opportunity he was being offered, and completed more checks prior to proceeding. In not doing so, I don't think Mr P has reasonably done enough to satisfy himself that he was making legitimate payments towards an investment and I therefore think Santander can fairly apply this exception of the Code.*

#### *Recovery of funds*

*I've also thought about whether Santander took reasonable steps to recover Mr P's funds once it was made aware he was the victim of a scam. The scam didn't come to light until some time after Mr P made his payments towards the scam and in any event, I understand that the Police have frozen the account in question that received Mr P's funds. I therefore don't think Santander could have done anything further to recover Mr P's funds once it was made aware of the scam.*

*Overall, for the reasons I've explained above, I think it is fair for our service to consider Mr P's complaint based on the evidence currently available and having done so, I think it is fair and reasonable for Santander and Mr P to share liability for Mr P's losses under the CRM Code, as both parties could've done more to prevent the scam.*

### ***My provisional decision***

*My provisional decision is to partially uphold this complaint and for Santander UK PLC to refund:*

- *50% of the payments Mr P made towards the scam (totaling £10,055.50)*
- *8% simple interest, from the date it provided its final response to Mr P's claim until the date of settlement.*

Mr P accepted the provisional decision, although did question why Santander froze other much smaller payments, but not these. He also noted that other victims of this scam have received a full refund.

Santander didn't respond to the provisional 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.

As Mr P has agreed with my provisional decision and Santander hasn't provided a response, I see no reason to deviate from the decision previously reached. My final decision is therefore the same as I've set out above.

To answer Mr P's questions, I can't comment on why other payments he made from his account may have triggered – banks have fraud detection systems that rely on a number of different factors, not just the payment value to determine the fraud risk present and this can impact when a firm may choose to intervene.

I appreciate Mr P's comments that other victims receive different proportions of their losses back. Our service considers complaints on a case by case basis when determining what is fair and reasonable for each particular set of circumstances.

## **My final decision**

My final decision is that I partially uphold this complaint and I direct Santander UK PLC to refund:

- 50% of the payments Mr P made towards the scam (totaling £10,055.50)
- 8% simple interest, from the date it provided its final response to Mr P's claim 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 12 March 2025.

Kirsty Upton  
**Ombudsman**