

The complaint

Mr L complains that Santander UK Plc ('Santander') won't refund the money that he lost after falling victim to a scam.

What happened

In 2022, Mr L was introduced to an investment opportunity by his daughter. The investment would be made through a company I'll refer to as V and involved trading.

Around six months after his daughter had invested, Mr L decided to invest. Mr L says his daughter had been able to withdraw a few thousand pounds from her investment, which reassured him that it was genuine. Mr L also had a zoom call with an intermediary, who explained what the investment entailed.

Mr L says he completed a lot of due diligence which included checking the director's online profiles and professional histories, checked V's website and checked V's regulatory status.

Mr L made the following payments from his Santander account as part of the investment.

Date	Details of transaction	Amount
16.2.2023	Payment to V	£5,000
17.2.2023	Payment to V	£3,000
18.2.2023	Payment to V	£5,000
19.2.2023	Payment to V	£5,000
20.2.2023	Payment to V	£5,000
21.2.2023	Payment to V	£5,000
22.2.2023	Payment to V	£5,000
23.2.2023	Payment to V	£5,000
24.2.2023	Payment to V	£5,000
25.2.2023	Payment to V	£7,000

Mr L became aware it was a scam when he was unable to withdraw funds from his investment, and raised a scam claim with Santander.

Santander didn't give Mr L a response on his scam claim, saying there are ongoing investigations by external organisations. So, they're unable to reach an answer on whether Mr L was the victim of a scam or whether it was a legitimate investment.

Mr L was unhappy with the lack of response from Santander and brought a complaint to our service.

An investigator looked into Mr L's complaint and recommended that Santander refund him in full. The investigator felt there was sufficient evidence to reach an answer on Mr L's complaint under the Contingent Reimbursement Model Code (CRM Code). The investigator felt the evidence supported that it was unlikely Mr L's funds were used for their intended purpose and had been obtained by dishonest deception, so his claim is covered by the CRM

Code. The investigator also wasn't satisfied that Santander could rely on an exception to reimbursement under the CRM Code.

Santander disagreed with the investigator's view, asking for more time to reach an answer.

In their view, the investigator had recommended that interest be paid on the refund and calculated from the date Santander declined Mr L's fraud claim until the date of settlement. The investigator got in touch with Mr L and Santander and clarified that the interest should be calculated from the date of their view (6 December 2024) until the date of settlement.

Mr L disagreed with this change to the calculation of the interest, saying another bank had refunded his daughter and calculated interest from the date of the payments. Mr L feels this is a fairer date to use as it reflects the true impact of having to wait to get his refund.

As the case couldn't be resolved informally, it was passed to me to review.

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 be good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position at law is that a bank such as Santander are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Is it appropriate to determine this complaint now?

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

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. 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.

I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

As for investigations by liquidators/administrators, these are normally made for the purpose of maximizing recoveries for creditors. Sometimes they lead to civil proceedings against

alleged wrongdoers, or against allegedly implicated third parties. But the claims may not be relevant to the issues on the complaint. And, even if they are potentially relevant, such claims are quite often compromised without a trial and on confidential terms, so the outcome is of little benefit to our service.

In order to determine Mr L'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 L 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 L first raised his claim with Santander in June 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 L 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 might result in some recoveries for V's creditors/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 L under those processes in respect of this investment before paying anything I might award to them on this complaint.

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

Are Mr L's payments covered by the CRM Code?

Santander have signed up to 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, for example 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 L made his payments meets the definition of an APP scam, I need to consider the purpose of the payments and whether Mr L thought this purpose was legitimate. The purpose V had in mind at the time of the payments and whether this was broadly in line with what Mr L 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 L was making payments to V as part of an investment. I haven't seen anything that suggests Mr L didn't think this was a legitimate purpose.

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

In reaching an answer on what purpose V had in mind, I've considered the wider circumstances surrounding V, V's directors and any linked businesses. The key information to this case is:

- V claimed to be regulated by the CSSF and to have regulation pending from the FCA. However, both the CSSF and FCA have said this isn't true. Even after the FCA's intervention in April 2023, V still made claims to investors that it was with the CSSF, which also wasn't true.
- The rates of returns that V promised were unsubstantiated. There is no evidence available that supports V trading successfully or generating the profits that it claimed it was making.
- The beneficiary bank has provided evidence that V lied at least twice when applying for accounts.
- Investors were told that their funds would be immediately moved to a trading account and used for Forex trading. Of the money that was sent to J (a director of V) and another party, less than half appears to have been potentially used for the intended purpose. Also, funds weren't separated from the personal funds of J.
- Of the funds paid to V, less than 12% was returned to investors. Some investors did receive funds, but funds were also sent to J and other personal accounts and used for what appeared to be non-trading purposes.

Based on this, I'm persuaded that it's more likely than not Mr L's funds weren't used for their intended purpose and that it's more likely than not V obtained the funds through dishonest deception. So, I'm satisfied that Mr L's payments meet the definition of an APP scam and are covered by the CRM Code.

The CRM Code says that Mr L is entitled to a full refund unless Santander can establish that an exception to reimbursement applies.

Santander haven't said that an exception to reimbursement applies, they've said they can't reach an answer. But, for completeness, I have considered 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 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.

Did Mr L have a reasonable basis for believing the investment was genuine?

I'm satisfied that Mr L did have a reasonable basis for believing the investment was genuine and I'll explain why.

Mr L says he completed due diligence before investing which included checking the director's online profiles and professional histories, checking V's website and checking V's regulatory status.

Also, an intermediary was involved in recommending the investment. The intermediary had a zoom call with Mr L prior to him investing and had explained how the investment worked. This intermediary was FCA regulated, which added validity to the investment.

And, most importantly, Mr L's daughter had invested approximately six months prior. Mr L says she had received the promised returns and had been able to withdraw a few thousand pounds from her investment, which reassured him that it was legitimate.

Taking into account the checks Mr L did, and importantly the personal recommendation from his daughter, I'm satisfied that he did have a reasonable basis for believing the investment was genuine. So, I'm not satisfied that Santander can rely on this exception to reimbursement.

Did Mr L ignore an effective warning given by Santander?

Santander say when Mr L made the payments in the table above, he chose the payment purpose as "investment".

In response, he was shown a warning each time which said *"it's your responsibility to understand the details of what you're investing in and complete sufficient checks before proceeding. We're seeing a rise in investment and cryptocurrency scams. Often criminals convince people a scam is a genuine opportunity and victims lose their money. We're taking this seriously and want to make sure you know about some of the key checks you should make to help protect your money. As a minimum, you should check the FCA website to understand the legitimacy of the opportunity."*

In this case, V said they were in the process of becoming regulated by the FCA. So, Mr L checking the FCA website wouldn't have shown any information about V.

I'm not satisfied that the warning Mr L was shown, gave him any relevant suggestions in what checks he could perform in order to satisfy himself he wasn't potentially the victim of a scam. So, I'm not satisfied that Santander can fairly say Mr L ignored an effective warning by failing to take action in response to such a warning.

On that basis, I'm not satisfied that Santander can rely on this exception to reimbursement either. So, Mr L is entitled to a full refund of the £50,000.

The interest award

Santander didn't decline Mr L's claim under the CRM Code. Santander said they couldn't give an answer as they were awaiting the outcome of an ongoing investigation by an external organisation.

As part of our investigation, we obtained information which enabled us to reach our answer under the CRM Code, which was set out in the investigator's view. As Santander weren't aware of that information until they received the view, I'm satisfied that it's fair for them to calculate the interest on the refund from the date of the investigator's view (being 6 December 2024) until the date of settlement.

I appreciate that another bank may've calculated interest on a refund they proactively made to Mr L's daughter using different dates, but I'm not satisfied that it would be fair to use an earlier date on this case. Also, I can't fairly say Santander acted unreasonably in not providing Mr L with an answer or refund earlier, based on the information they had available at the time.

Putting things right

To put things right, I require Santander UK Plc to:

- Refund Mr L in full, being £50,000
- Pay simple interest of 8% per annum on that refund, calculated from the date of the investigator's view (6 December 2024) until the date of settlement*
- In order to avoid the risk of double recovery Santander is entitled to take, if it wishes, an assignment of the rights to any funds that may be recovered as a result of the court proceedings or ongoing investigations.

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

My final decision

My final decision is that I uphold this complaint against Santander UK Plc and require them to compensate Mr L as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 June 2025.

Lisa Lowe
Ombudsman