

## The complaint

A company, which I'll refer to as R, complains that Santander UK Plc won't reimburse it after it lost money to an investment – that it now considers to have been a scam.

Mr S, who is a director of R, brings the complaint on R's behalf via a family representative. For ease of reading, I'll refer to all submissions as being made by Mr S directly throughout this decision.

## What happened

On 28 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 S has explained that he was introduced to an investment opportunity, provided by a firm that I'll refer to as T, as the director of T lived nearby to him and Mr S' friend of many years had been completing some work on the director's home. Mr S' friend advised that he had seen the director trading in real time, and also knew of two other individuals who had invested with him and received substantial profits. Mr S' brother had also invested around six months prior, and before doing so had visited the director's home and also watched him complete real time trades. Mr S' brother's investment with T also appeared to be performing well. Mr S has explained another family member with considerable experience in the finance sector also invested before him, which reinforced to Mr S that this was a genuine opportunity.*

*Mr S has also explained that he checked Companies House and found that T was a legitimate, active firm. He said he also checked the Financial Conduct Authority website and found no warnings regarding T.*

*Encouraged by this, Mr S confirmed he also wished to invest and, upon receiving and signing a contract with T, sent his initial investment in December 2021 of £150,000. He made this across two payments of £99,000 and £51,000 to allow for daily transfer limits and funds were sent to an account in T's name. On the contract between Mr S and T, the director personally guaranteed the initial investment made. Other than this initial guarantee, Mr S wasn't given a specific rate of return to expect from his investment. Mr S was aware from others who had already invested that they appeared to be making profits of 2-3% per week, but understood that this wasn't guaranteed, only the initial investment sum was.*

*Mr S explained that he received weekly reports confirming how his investment was performing, and it appeared to be receiving good returns. He therefore decided to invest further funds. In February 2022 he made two further payments, each of £50,000. Before making these payments, Mr S was advised that T was in the process of moving its banking to a new service provider and provided details of an account where funds could be sent temporarily. Mr S was advised that alternatively, he could wait for the new account to be set up. Mr S decided to send funds to the 'temporary' account.*

*Finally, in around June 2022, Mr S has explained that he asked to make a withdrawal from his investment of £200,000 – just to see how the withdrawal process worked. However, after speaking to staff members, he was convinced into not doing so and instead decided to*

invest further. He made a payment of £700,000 by CHAPS to a third account, which he was told was a 'pay master account' for funds to be received into, before onwards remittance.

However shortly after making this payment, Mr S received contact from another investor, advising they believe this to be a scam. Mr S contacted Santander and requested the recent CHAPS payment be reversed. He also contacted the director of T to request a withdrawal of other funds. However, Mr S has since had contact from the police, advising T is under investigation. As the account he made his final payment to has also been frozen, he has received no funds back to date.

Mr S complained to Santander, but as there was an ongoing police investigation, it didn't consider it was able to provide an answer to his claim. It did however offer £100 in compensation for not logging the complaint as fraud sooner. Mr S also complained that despite requesting copies of calls he had with Santander, the CD evidence provided was blank. Santander apologised and offered a further £75 in compensation, but advises that this was respectfully declined by Mr S.

Unhappy with Santander's response, Mr S referred his complaint to our service. In its file to our service, Santander has explained that when making the payments in February 2022, the payment details Mr S provided didn't match the account name and this therefore triggered intervention by their staff. During a call with Mr S, he explained he was making payments to an investment fund that he'd previously invested in and that these new account details were provided, due to the trading firm's account being moved to another provider. Santander advised Mr S to call the investment firm and ensure he wasn't falling victim to an email interception scam, which he agreed to do.

Santander also advised that for December 2021 and February 2022 payments made, Mr S was asked the payment purpose when making the payments online, and he confirmed it was 'paying for a service'. As a result, Mr S saw the following warning:

'Could this be a scam?

If you're paying an invoice and the account details have changed, or the invoice is for a service you haven't ordered or received, it could be a scam. We recommend always checking the payment details by phone or in person before making the transfer.

If someone is pressuring you, please stop now.'

For the final payment, Santander has said that as it was made by CHAPS, Mr S wasn't asked the payment purpose and no intervention was triggered.

Santander has highlighted a section of an email provided by Mr S, from T, where Mr S is advised that when transferring funds he should not state the reason for payment as an investment, as this could result in both his and T's accounts being frozen. The email also stated that T is not FCA regulated, although it is in the process of becoming regulated. Santander has stated on this basis that it was unable to provide a relevant investment warning to Mr S, as he chose the incorrect payment purpose. It also considers that this information from T ought to have raised alarm bells for Mr S, as he was effectively being told to deceive his bank, and that the investment firm wasn't FCA registered.

On this point, Mr S clarified that he only received this request to select a specific payment purpose when making his final payment (where a purpose in any event wasn't required). For other payments, he'd selected 'paying for a service' as he considered this was the most accurate purpose for what he was doing - by enlisting someone to trade for him. He also said that upon receiving this email request, he contacted one of T's 'staff' members and was given answers he considered to be plausible - explaining that T only now is required to be regulated based on the size of the business growing. As Mr S hadn't previously been provided with this request from T when making smaller payments, he thought the reasoning of a growing business made sense.

*An investigator considered Mr S' 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 of the CRM Code applied – she therefore recommended that Santander should reimburse Mr S in full, although acknowledged that due to the size of Mr S' losses, she could only direct Santander to refund up to our award limit of £415,000.*

*In its response to our view, to summarise, Santander raised the following concerns:*

- It is premature to reach a conclusion on whether the above payments are the result of an APP scam and therefore fall within the 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 raised that from conversations with Mr S, it appears there has been confirmation that funds from at least his final payment are still available, but that the account in question is frozen, pending the police investigation. It considers that if this is the case, Mr S will not suffer a loss on this payment. It also raised that by refunding customers now, this complicates the recovery position for businesses when funds may be later released.*
- Santander questioned whether the payments Mr S made from R's account were to generate assets for the business, or for personal gain. Santander considers it more likely, based on R's accounts, that they were for personal gain, which breaches the terms of the business account.*

*Santander also considered that even if the Code could be applied, the investigator has failed to consider Mr S' own contribution to the losses he suffered, where it considers red flags were apparent from the start. Its concerns included:*

- Mr S failed to notice when checking Companies House that T was not listed as being within a financial sector, or that no accounts had been filed.*
- The contract Mr S received was not on headed paper and the wording requested Mr S be dishonest with his bank, setting out that it wasn't regulated.*
- If Mr S checked the FCA website as he states, it would have shown warnings to advise that if a firm isn't regulated, it's probably a scam.*
- Mr S hasn't evidenced that he attempted to verify T's claims that there was a financial threshold before needing to be FCA registered.*

*As Santander disagreed with the investigator's view, the complaint has been referred to me for a final decision.*

*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.*

### ***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?*

*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 S' complaint.*

*Is it appropriate to determine Mr 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 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 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 S 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 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 accounts where Mr S' payments were made to (particularly the last payment made as Mr S has indicated these funds have been frozen) 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 and if so, what proportion of Mr S' losses this may cover, or how recovered funds will be dispersed among all victims. 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 S as well. Santander can ask Mr S 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 S 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 S 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 T intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of T.*

*From what I've seen and what Mr S has told us, I'm satisfied Mr S made the payments with the intention of investing in forex trading. He thought his funds would be used by T to trade and that he would receive returns on his investment.*

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

*Mr S made his payments to an account held in T's name, as well as two other accounts. I've reviewed beneficiary statements for all three of these accounts and while I can't share the details for data protection reasons (although I understand a summary of our findings has already been shared in confidence with Santander), the statements do not suggest that legitimate investment activity was being carried out by T at the time Mr S made the relevant transactions. Whilst there is evidence T initially did carry out trades, it doesn't necessarily follow that it was a legitimate enterprise. T 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 S' (and other investors' funds) weren't being traded in the manner they believed they were. So, in essence, regardless of where Mr S' 'specific' payment went, the overall firm and its investment model here was illegitimate - and Mr S had been deceived on this point.*

Further concerns centre around the owner of T (who was bankrupt at the time). From the paperwork provided to consumers, he appears to have “personally guaranteed” the investments (despite forex being a high-risk investment and him never being in a financial position to do so). He also signed contracts on behalf of T 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, T 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 S’ own contributions towards his losses, Santander has also raised several elements of the scam that ought to have caused concern to Mr S. It’s referred to a version of Mr S’ contract it’s seen, wherein customers were told to not disclose to their banks that this payment was for an investment, to avoid their accounts being frozen due to T’s lack of regulation. It therefore seems Santander is also aware of various behaviours of T’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 T, I am satisfied that it is more likely T was not acting legitimately, since its intentions did not align with Mr S’ intentions, and I am satisfied that T was dishonest in this regard. It follows that I’m satisfied Mr S was the victim of a scam.

Is Mr S 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 S ignore an effective warning?

I’ve considered the warning referenced earlier in my decision, that Santander has said it provided to Mr S. However I don’t consider it to be ‘effective’ under the CRM Code. For a warning to be considered effective, the Code requires it to be (among other things) impactful, clear and provide the customer with the potential consequences of proceeding. I don’t think this warning met these criteria – it is more specifically aimed at interception scams and therefore doesn’t cover the key hallmarks of the scam Mr S fell victim to.

Santander has raised that Mr S was directed by T to be dishonest about the payment purpose, making it more difficult for Santander to protect him. However, Mr S has explained that this guidance from T was only provided at the time he made his final payment of £700,000. For other payments, Mr S has explained he chose the payment option of ‘paying for a service’ because this is what he considered he was doing – he was sending money to a broker who would provide a service and take a cut of proceeds as a result. I find this testimony plausible, particularly as Mr S was contacted by phone when making the second set of payments in February 2022 and Mr S was very open with Santander that he was

*making further investment payments towards an investment he had sent funds to previously. Despite the fact Mr S was making large payments to two separate payees by bank transfer for what he claimed was an investment, Santander provided no investment warning to Mr S, only advising him to be wary of changes to bank account details. I think Santander missed an opportunity here to intervene and further question the payments Mr S was making.*

*Similarly, as Mr S made the final payment by CHAPS, no warning was provided at all, despite this being a significantly larger payment than any other in the 12 months of bank statements I have reviewed for R. As an effective warning is a minimum requirement expected of firms under the CRM Code, I consider Santander ought also to have contacted Mr S prior to this payment being made to ensure he wasn't at risk of financial harm from fraud.*

*Therefore I'm not satisfied that Santander can rely on this exception of the Code as a reason to not reimburse Mr S.*

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

*I've considered Santander's assertion that Mr S proceeded with this scam, despite red flags from the start and whether he acted reasonably in light of the circumstances. Santander has raised that prior to sending the investment funds, Mr S completed minimal research, only checking whether T was registered on Companies House and relying incorrectly on a lack of FCA warning as evidence that there was nothing untoward.*

*I don't dispute there's more that Mr S could have done, before deciding to invest. However, that isn't the test here I'm considering. I need to determine whether I think Mr S acted unreasonably by believing this was a legitimate opportunity. Having considered the complaint holistically, I don't think he did.*

*First, I've taken into account the way Mr S was introduced to this scam – by the time Mr S invested, he knew of two people close to him – one being family – that had personally met the director and seen him 'trade' on what appeared to be a convincing set up. He also knew several other people who had invested with him, some with greater financial knowledge than himself, all who appeared to be profiting and some of which who had successfully withdrawn those profits. Without a prior knowledge of pyramid or Ponzi investment schemes, I can understand why it would appear illogical that individuals would receive profits from a scheme unless it was legitimate.*

*Additionally, I think there were elements of this scam that were particularly persuasive. For example, the director Mr S liaised with had employees working for him, who were readily contactable and Mr S received regular updates from the company, as well as his weekly trade updates. Mr S had also seen that this was a firm actively registered on Companies House. I accept Santander's comments that the nature of the business was not financially linked, but IT based. However, to someone like Mr S without a financial background or investment experience I don't think this is so outlandish that Mr S was unreasonable to not question this.*

*I accept Mr S could have done more to research the requirement for FCA registration and what it meant to lack this as a firm. However, again, Mr S' trust was solidly built from his introduction to the firm and I don't think the reasons he was given for FCA registration not being in place were implausible. Additionally, Mr S said he did search the FCA register and no warning relating to the firm appeared, which he took to be positive – and Santander had provided no warning to the contrary on this point at the time Mr S made his payments.*

*Overall, having considered the complaint as a whole, I don't think Mr S acted unreasonably when making these payments. It therefore follows that I don't think Santander can rely on this exception of the Code to deny reimbursement.*

*Were these payments made for Mr S' personal gain, or on behalf of R?*

*I've considered Santander's concerns that payments made were for Mr S' personal gain, rather than an investment on behalf of R. However, Mr S has provided evidence in several forms to dispute this:*

- *Copies of contracts of the investment with T, which state the payment was being made for and on behalf of R;*
- *Testimony from R's other director, confirming discussions about this investment took place and the investment was agreed upon;*
- *Testimony from R's new accountant, confirming previous accounting mistakes were raised and rectified in more recent account statements, with evidence to support this.*

*Having considered everything, I think Mr S has given plausible and persuasive testimony that these payments were made on behalf of R and are therefore a business, rather than personal loss.*

### **Compensation**

*Santander has awarded Mr S £100 compensation to acknowledge that it ought to have logged a scam claim for Mr S sooner and also offered further compensation for failing to provide a call recording, which Mr S declined. I think the compensation paid is a proportionate offer to acknowledge the additional time it has taken to consider this complaint, given the complex nature of the case.*

### **My provisional decision**

*Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £415,000, plus any interest and/or costs that I consider appropriate. If I think that fair compensation is more than £415,000, I may recommend that the business pays the balance.*

**Provisional decision and award:** *I provisionally uphold the complaint. I think that fair compensation is £950,000. My provisional decision is that Santander UK PLC should pay R £415,000. In addition, it should apply 8% simple interest, from 15 days after Mr S raised a claim with Santander, until the date of settlement.*

**Recommendation:** *I think fair compensation is more than £415,000, so I recommend that Santander UK PLC pays R the balance.*

*This recommendation is not part of my determination or award. Santander UK PLC doesn't have to do what I recommend. It's unlikely that R can accept my decision and go to court to ask for the balance. R may want to get independent legal advice before deciding whether to accept this decision.*

Mr S agreed with my provisional decision but Santander didn't. To summarise:

- Santander maintains that there is a reasonable basis to suggest that the outcome of the police investigation into this matter will have a material impact on this case and therefore disagrees that our service is in a position to determine whether the case is in scope of the CRM Code, or to confirm R's losses.
- Santander said the provisional decision does not make it clear whether any genuine trading activity completed by T may have overlapped with what I have concluded was scam payments made by Mr S.
- Explanations provided of the link between the three accounts Mr S paid are insufficient to support a determination that Santander should reimburse payments made to all accounts.
- The provisional decision does not explicitly reference that funds Mr S sent to the final



account remain frozen within that account.

- Santander argues that by asking Mr S to undertake to transfer to it any rights to recovery elsewhere, this does not address the real risk of over-reimbursement to R, or the risk to Santander, should refunds later recovered be dissipated by R.
- Santander considers the provisional decision does not give proper consideration to the lack of precautionary steps taken by Mr S, as the director of R and therefore owing a duty to R in this capacity. It considers Mr S placed too much emphasis on the word of family and friends, rather than undertaking his own research, and ignored warning signs such as being told to lie to his bank about the nature of the payment. Santander considers this decision is inconsistent with others reached relating to the same scam.
- Santander questioned the credibility of the evidence received that suggests previous accounting mistakes of R's have been corrected.

### **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.

I've considered the additional points Santander has raised but they don't change the opinion I've reached in my provisional decision. I've therefore explained why below.

The question of whether our service can appropriately determine complaints relating to T is one that has been covered in several decisions now by our Service, as well as in discussions with Santander. While I appreciate Santander's strength of feeling on this point, I don't think there is anything additional to add to this point above the reasoning that has already been provided, in this provisional decision and other decisions on why our service considers it appropriate to determine these cases now.

In relation to genuine trading undertaken by T, this has been considered on a case by case basis when determining whether we think individuals saw any funds invested as intended. In the case of Mr S, I don't consider that by the time he transferred funds to T, it was using these funds for the purpose that Mr S had transferred them. In any event, I think the important point to remember here is that not being authorised when required to be (as was the case here with T) is a criminal offence, and that even if trading *did* happen prior to Mr S' payments being made, that doesn't mean it was ever a legitimate enterprise.

In relation to explanations provided of the link between accounts Mr S paid, our Service has already shared what it can with Santander. The DISP rules allow us to accept information in confidence and provide a summary - which is what we have done - in the same way I would expect us to do if Santander was sharing information with us in similar circumstances.

Mr S has received assurances from the Police that the final payment he made of £700,000 remains frozen in the account he sent it to. I understand Santander feels strongly about whether that payment should therefore be considered in Mr S' losses. However it's important to note that regardless of who sent funds to what account and at what time, this does not guarantee where any future disbursement of funds will direct those payments. I think it would be unfair for Mr S to therefore be out of pocket for longer on this basis when the return of his funds is not guaranteed from the receiving account.

I understand Santander has concerns regarding future rights to recovery, but I don't think this negates from any requirement to comply with the requirements of the CRM Code which

states reimbursement should be made without delay. I've seen no evidence to support a notion that R wouldn't return any funds not belonging to it, should that situation arise. In any event, it's for Santander to decide how formal it wishes for any assignment of rights formalities to be – and for Santander to notify recovery channels under the Proceeds of Crime Act that it is the correct party to be paid.

On the point of Mr S' reasonable basis for belief, I accept that there are factors both in favour and against this. In my provisional decision, I acknowledged that Mr S *could* have done more. However, considering how the scam panned out holistically, I could also reasonably see why Mr S was convinced that this was a legitimate opportunity, based on the number of family members he had seen invest and providing positive reassurances, some of whom had met personally with the director of T at his home and seen him work. I don't think the reassurance this would provide should be underestimated, and I can see why it would be difficult to conclude from seeing people close to you receiving profits above their investment that this wasn't a legitimate opportunity.

When Mr S requested to withdraw funds, he hasn't said he did so due to having doubts, but to see how the process worked, so I don't think it's unreasonable that he was then convinced otherwise and ended up investing further.

I also understand that when making the final payment, the request to be dishonest with his bank ought to have raised concerns. But again, by this point, Mr S had been trading for some time, and from everything he'd seen, there was no reason at this point to have doubts about T. Overall I think that while there were some red flags, the overall picture painted by T and others investing would have reasonably compensated for these, and I therefore maintain that Mr S acted reasonably.

Santander has referred to other decisions reached, relating to this scam. We consider each case on its individual circumstances and while there may be similarities between circumstances, no two will be the same.

Regarding concerns over the investment being accounted for in R's finances, Mr R's new accountant has advised that the final payment made by Mr S has been added to R's statement under 'debtors – amounts falling due within one year'. As referenced by Santander, this is publicly available information. The accountant has also confirmed that other payments made towards the scam will be rectified on R's next set of accounts. Additionally, R's other director has confirmed that discussions were held about this investment, prior to it being made. The contracts provided by T also state the payment is being made 'for and on behalf of' R. I appreciate there is evidence for both sides of this particular point and it does therefore fall to me to consider what I think is most likely. While early representations made by Mr S' representative were that this investment was for personal rather than business gain, the question was posed to Mr S' representative during a phone call, with questions not provided in advance. When questioned on this point, Mr S' representative responded '*I think... I think it was on a personal level.*' It was only later after our service deemed the complaint as out of jurisdiction that his representative discussed this point with R's directors directly. While of course this early testimony carries some weight, I think it's fair to say the representative wasn't entirely sure and the importance of the question wasn't understood to clarify this point first.

The only other evidence that this payment *was* on a personal level is the initial accounts. Mr S has since stated there were multiple errors made by his previous accountant and these are still being sorted by his new accountant which has taken a great deal of time and money to sort. While I accept the evidence is quite balanced, overall I think it better supports Mr S' statement that these payments were made on behalf of R, rather than as a personal investment.

Therefore, while I accept this is a finely balanced case, my opinion remains the same that it is one covered by the CRM Code and that none of the exceptions set out in the Code can be fairly applied.

### **Putting things right**

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £415,000, plus any interest and/or costs that I consider appropriate. If I think that fair compensation is more than £415,000, I may recommend that the business pays the balance.

**Decision and award:** I uphold the complaint. I think that fair compensation is £950,000. My decision is that Santander UK PLC should pay R £415,000. In addition, it should apply 8% simple interest, from 15 days after Mr S raised a claim with Santander, until the date of settlement.

**Recommendation:** I think fair compensation is more than £415,000, so I recommend that Santander UK PLC pays R the balance.

This recommendation is not part of my determination or award. Santander UK PLC doesn't have to do what I recommend. It's unlikely that R can accept my decision and go to court to ask for the balance. R may want to get independent legal advice before deciding whether to accept this decision.

### **My final decision**

My final decision is that I uphold R's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 31 March 2025.

Kirsty Upton  
**Ombudsman**