

The complaint

Mrs P complains that Santander UK Plc ('Santander'), won't refund the money she lost as a result of what she believes was an 'Authorised Push Payment' ('APP') property investment scam.

Mrs P brings her complaint with the assistance of a professional representative. For ease of reading within this final decision, I will refer solely to Mrs P in the main.

What happened

The background to this complaint is well known to both parties, so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

Mrs P, along with her husband, says that she was persuaded to invest with a company that I'll refer to as 'Company H'. Company H was a private rental development company which offered loan notes to investors to raise money for its projects. It was the parent company of a group of companies. Mrs P says that the sale and rent of Company H's assets would later generate company income which would be used to pay investors income and capital.

Mrs P invested with Company H in August 2019, making two faster payments of £20,000 to Company H on 17 and 19 August 2019.

Mrs P also invested a further £4,000 in August 2020 – with the payment being made to Company H from a joint account she held at another banking provider.

Company H has gone into administration. Mrs P believes the investment wasn't genuine and that she is the victim of a scam. She complained to Santander in September 2024 advising it should reimburse her under the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code.

Santander issued a final response, on 24 September 2024, declining to reimburse Mrs P her loss. In short, it considered the matter was a civil dispute. Its letter provided referral rights to this service, so Mrs P brought her complaint to this service for an independent review.

Our investigation so far

The Investigator who considered this complaint didn't recommend that it be upheld. They said there was insufficient evidence to conclude that Company H didn't intend to provide the agreed investment or make the returns it set out – meaning they didn't consider there was sufficient evidence to conclude that the definition of an APP scam had been met. So, they didn't consider they could fairly and reasonably ask Santander to reimburse Mrs P under the provisions of the CRM Code for the payments she had made to Company H.

Mrs P disagrees and maintains that her complaint should be upheld under the CRM Code and that Santander also failed to comply with PAS 17271:2017 (the PAS Code). And she has also explained why she thinks Company H was operating a scam and a Ponzi scheme. In particular, Mrs P has referred to high commissions of as much as 35% paid to introducers and to high interest rates offered as guaranteed returns.

As Mrs P didn't accept the Investigator's opinion, 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, I'm 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 time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

Mrs P's representative has made detailed submissions in support of her complaint. I would like to assure Mrs P and her representative that I've read and considered everything that has been sent in. However, I don't intend to respond in similar detail. I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No courtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here – which is whether Santander acted fairly in its answering of the complaint that the matter is a civil dispute, and it is therefore not liable to reimburse Mrs P under the provisions of the CRM Code. 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.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, in some situations, taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), businesses such as Santander shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Where the consumer 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 consumer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the CRM Code, which Santander was signed up to and in force at the time Mrs P made payments toward the investment with Company H. As Mrs P's representative argues she was scammed by Company H, I've considered whether the CRM Code applies and if she is due any reimbursement as a result.

The CRM Code didn't apply to all APP payments which ultimately resulted in a loss for the customer. It only covered situations where the payment met its definition of an APP scam. The relevant definition for this case would be that Mrs P transferred funds to another person for what she believed was a legitimate purpose, but which was in fact fraudulent.

I've considered the evidence available, but I can't fairly conclude that Mrs P has been the victim of a scam in line with this required definition. This means the CRM Code doesn't apply to her payments and so Santander isn't required to reimburse her under it.

Our Investigator covered in detail why they considered the payment purpose Mrs P had in mind, and the purpose in which the recipient had, matched. I'm in agreement with them that this was the case, I'll explain why.

It's accepted Mrs P's purpose for making the payments was to invest in Company H and for the funds to be used towards property development. And that she was persuaded at the time, through the paperwork, this was a legitimate venture. I accept that Company H failed to deliver what was expected from the investment, but I haven't seen any clear evidence this was always what it intended; or that at the time of the payment, it planned to use Mrs P's funds in a different way to what was agreed. I haven't seen persuasive evidence that Company H's intention was to defraud Mrs P when it took her funds.

The key information to this case is:

- Company H completed three different development projects. Company H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.

I'm also not persuaded Company H completed these developments to draw in investors. No persuasive evidence has been put forward to make me believe this is the more likely scenario.

- Points raised by Mrs P's representative are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring their claim within the scope of the CRM Code. Whilst Company H may have, for example, misrepresented certain information, failed to cooperate with administrators, not filed accounts and paid high commissions to introducers, there is currently no evidence to say this was done with the intention of scamming investors. A lot of adverse inferences have been drawn here.
- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects. Whilst transactions have been investigated, there is currently no evidence that funds weren't used for the intended purpose.
- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that Company H intended to use Mrs P's funds for a different purpose.

Mrs P's representative has provided a significant amount of additional paperwork from several sources that it says evidence Company H was operating a scam. But as our service has explained to it on a number of cases already, while the information provided does indicate there may have been some poor business practices and/or financial management in some areas of Company H, this isn't enough to say it was operating a scam. We haven't seen evidence that Mrs P's funds weren't used for the intended purpose or that Company H took them with fraudulent intent.

Ultimately, the information we currently hold suggests that Company H was a failed investment venture, not a scam. The information provided doesn't evidence Company H had fraudulent intent when it took Mrs P's funds, as required under the definitions within the CRM Code. So I can't agree Santander was wrong to consider Mrs P's situation a civil matter.

This also means I'm unable to ask Santander to reimburse Mrs P on the basis that she was vulnerable at the time the payments were made, as her representative has alleged. When the CRM Code applies, a customer can be reimbursed if they are vulnerable even when an exception to reimbursement applies. But as that's not the case here and the CRM Code doesn't apply, I won't be asking Santander to reimburse Mrs P.

If material new evidence comes to light at a later date, Mrs P can ask Santander to reconsider her fraud claim under the CRM Code.

I've gone on to think about whether Santander should be held responsible for Mrs P's loss for any other reason.

Taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), Santander should have been on the lookout for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

With the payments Mrs P made, I'm not persuaded that Santander would have had any concerns. Company H was a legitimate company operating at the time the payments were made and was paying returns to other investors. Detailed documentation was provided and there was nothing in the public domain at the time to suggest Santander should have been concerned that Mrs P might be falling victim to a scam. Many of the points / concerns about some aspects of Company H that have been raised, have come to light after detailed analysis years after Mrs P made the payments.

I'm really sorry to disappoint Mrs P, as I know she has lost a significant amount of money. But I'm not satisfied that I can fairly ask Santander to refund her under the provisions of the CRM Code based on the evidence that is currently available. And I'm not satisfied Santander would have been on notice that Mrs P was potentially at risk of financial harm from fraud at the time she made the payments – so therefore it couldn't have prevented her loss either. Overall, I don't consider her loss is the result of any failings by Santander.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 5 December 2025.

Matthew Horner
Ombudsman