

The complaint

Miss R complains that Santander UK Plc ('Santander') won't refund the money she lost after falling victim to a scam.

What happened

In 2022, Miss R was made aware of an investment opportunity with a company, who I'll refer to as R. R later changed their company name, I'll refer to the new company name as V.

Miss R says the investment was referred by someone who had previously provided coaching on investing in the property market. Miss R was referred to an individual who I'll refer to as L. L invited Miss R to a presentation to find out more about the investment and meet the directors of R/V. The directors explained about the investment and their techniques in trading.

Miss R says she had some prior knowledge about CFDs and stock market investment, and what the directors said made sense. Prior to investing, Miss R looked up the directors' online profiles and searched for information about R/V. She also fully reviewed the brochures and documents that she was given about the investment. Miss R was told that a broker involved in the investment (who I'll refer to as VF) were FCA regulated, and that L was also FCA regulated. Miss R believed only 1% of her investment was at risk and profits would be split with R/V – Miss R was to receive 70% and R/V to receive 30%. Miss R says she wasn't promised any guaranteed returns.

Miss R decided to invest and made a payment of £5,000 in July 2022. The payee was one of the directors of R/V and Miss R was told this was a "client account".

Miss R received weekly performance reports and decided to invest a further £10,000 in August 2022 – using the same payee details as the previous payment.

In April 2023, Miss R became aware that R/V weren't regulated as they had claimed. Miss R didn't receive any returns on her investment, or the return of the capital she invested.

In September 2023, Miss R raised a fraud claim with Santander, asking that they refund her. Santander considered Miss R's fraud claim under the Contingent Reimbursement Model Code (CRM Code) but declined to give Miss R an answer. Santander said they were awaiting the outcome of an ongoing investigation by the Financial Conduct Authority (FCA).

Miss R wasn't happy with Santander's response, so she brought a complaint to our service.

An investigator looked into Miss R's complaint and upheld it, recommending Santander fully refund her. The investigator said they had sufficient evidence to reach an answer, and didn't need to wait for the outcome of the FCA investigation. Under the CRM Code, the investigator was satisfied that Miss R was the victim of an APP scam, and she had a reasonable basis for believing the investment was genuine. The investigator highlighted that Santander said Miss R was shown a warning when she made the payments, but they hadn't shared the content of that warning with our service.

Santander disagreed with the investigator's opinion, saying we can't reach an answer until the FCA's investigation is complete.

As Santander didn't agree with the investigator's opinion, the case 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 the FCA investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations 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 or administrators, these are normally made for the purpose of maximising 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 Miss R'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 Miss R 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 Miss R first raised her claim with Santander in September 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 Miss R 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.

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

Are Miss R'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, and 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 Miss R made her payments meets the definition of an APP scam, I need to consider the purpose of the payments and whether Miss R thought this purpose was legitimate. I then need to consider the purpose R/V had in mind at the time of the payments and whether this was broadly in line with what Miss R 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.

Miss R was making payments to R/V as part of an investment. I haven't seen anything that suggests Miss R didn't think this was a legitimate purpose.

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

In reaching an answer on what purpose R/V had in mind, I've considered the wider circumstances surrounding R/V, V's directors and any linked businesses.

The key information to this case is:

- R/V claimed to be regulated by the CSSF and had 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 regulated with the CSSF, which also wasn't true.
- The rates of returns that R/V promised were unsubstantiated. There is no evidence available that supports R/V trading successfully or generating the profits that it claimed it was making.
- The beneficiary bank has provided evidence that R/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 R/V) and another party, less than half appears to have been potentially used for the intended

purpose. Also, these 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.
- There were no payments from R/V to VF (the broker firm) – which is what Miss R was told would happen. Instead around £2m in funds were sent to a cryptocurrency exchange and around £900k was sent to investors as returns. A receiving bank has shown that none of the funds received into R/V's accounts were used for the intended purpose of being sent to VF for trading in Forex.

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

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

Santander haven't said that an exception applies, they've said they can't reach an answer. But, for completeness, I have considered whether Santander could 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 Miss R have a reasonable basis for believing the investment was genuine?

I'm satisfied that Miss R did have a reasonable basis for believing the investment was genuine for the following reasons:

- Miss R was introduced to the investment by an individual who worked for a genuine company, who had provided coaching on investing in the property market. Miss R didn't think this party would recommend an investment that wasn't genuine.
- Miss R attended a presentation with other investors and the directors of R/V, as well as L. Miss R was reassured by meeting the directors face-to-face.
- Miss R read all of the marketing material provided by R/V, which was professional and clearly set out their investment strategy. As part of this material R/V said they were regulated by CSSF and were obtaining regulation from the FCA.
- Miss R researched the company and directors online and found no concerning information.
- Miss R had some previous experience in stock market investment and wasn't concerned about the information given by L or the directors about their investment/trading techniques in relation to R/V's funds.

- Miss R was given the bank details by L and was told that the account she was paying was in J's name (a director of R/V) and was a client account. Miss R was also told that VF (the broker) was FCA regulated, and the funds would be moved to VF for the purposes of trading - which reassured her.
- Miss R was told that only 1% of the investment fund was at risk and says she wasn't promised returns that were too good to be true.

From what I've seen Miss R did research into R/V and its directors before investing. She also received weekly performance reports between making her initial investment and deciding to make a further investment a month later.

Taking into account all of the information that Miss R had available at the time of making her payments, including a referral from a company she trusted, I'm satisfied that she had a reasonable basis for believing the investment was genuine. So, Santander couldn't rely on this exception to reimbursement.

Did Miss R ignore an effective warning?

Santander haven't evidenced that Miss R was shown a warning when she made these payments.

Even if they did provide a warning, as I can't see what the warning says, I can't fairly say the warning would be considered effective under the CRM Code, or that Miss R ignored an effective warning. So, Santander can't rely on this exception to reimbursement either.

As I'm not satisfied that Santander can rely on an exception to reimbursement, Miss R is entitled to a full refund.

The interest award

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 13 December 2024) until the date of settlement.

Redress and the risk of double recovery of funds

As there is an ongoing investigation by external organisations, it's possible Miss R may recover some further funds in the future, through that process. In order to avoid the risk of double recovery, Santander is entitled to take, if it wishes, an assignment of the rights to all future distributions under that process in respect of this £15,000 before paying the award.

But, if Santander elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Miss R for her consideration and agreement.

Putting things right

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

- Refund Miss R in full, being £15,000
- Pay simple interest of 8% on the refund, calculated from the date of the investigator's view (13 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 Santander elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Miss R for her consideration and agreement.

*If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss R how much it's taken off. It should also give Miss R a tax deduction certificate if she asks for one, so she 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 17 June 2025.

Lisa Lowe
Ombudsman