

The complaint

Miss S complains that Santander UK Plc hasn't refunded all the money she lost when she sent funds to what she now considers to have been an investment scam.

What happened

On 13 March 2025, I issued my provisional decision on this complaint. I wanted to give both parties the opportunity to provide any further evidence or arguments before I issued a final decision. That provisional decision forms part of this final decision and is copied below:

In the early summer months of 2021, Miss S says a work colleague started to mention an investment he'd made. He reported it was going well. This investment was with a company which I will refer to as "Company T". Company T supposedly was achieving exceptional returns on invested funds, predominantly through trading on international currency fluctuations (a trade often referred to as Forex).

Miss S explains that she and her other work colleagues waited to see how the investment worked out. The colleague later told them he'd been able to withdraw more from the scheme than his original investment.

A call was arranged for Miss S to speak to the main trader at Company T. She says he told her about the trades he was carrying out and gave her a personal guarantee that she would not lose any of her investment capital. The returns weren't guaranteed but were expected to be significant (other investors in this scheme were told they'd receive between profits of around 2% to 3% per week). Miss S explains that the trader was upfront with her that Company T was not yet registered with the FCA. There was therefore nothing for her to check on the FCA register.

Miss S said that after the call she made the decision to go ahead and invest with T. On 23 August 2021, she sent a Faster Payments transfer of £20,000 from her Santander account to an account held in the name of Company T.

All seemed to be going well. She received regular statements apparently showing the profits being made on her investment, and which showed excellent returns within a few months of her initial investment. Believing the investment was performing well, Miss S even suggested the investment to others.

On 31 March 2022, a credit of £9,348 was received into Miss S's Santander account, with a payment reference that included an abbreviated version of Company T's name. This was apparently a return on her initial investment, although it appears that payment originated with another company (which I will refer to as "Company L").

Having therefore received some returns on her initial investment, Miss S made a second payment to the same investment on 9 May 2022, this time for the sum of £10,075. The payment was sent to a different payee account, held by Company L. Miss S was told this change was due to Company T now undergoing FCA registration.

However, in July 2022 Miss S (and other investors) received an email indicating that fraud had occurred. She subsequently received an email from the Police confirming that the trader was being investigated for suspected fraud.

Miss S reported the matter to Santander as an APP scam shortly afterward.

Santander is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment Scams (APP scams) in all but a limited number of circumstances.

Santander considered Miss S's claim. It explained it was sorry to hear that Miss S had been the victim of a scam. Santander accepted it could have done more to protect Miss S from what had happened. But it said it thought Miss S should share the loss that resulted, because she had not carried out sufficient checks before making the payments she did. It therefore said it would refund 50% of the money Miss S had paid – the sum of £15,037.50. This was credited to Miss S's account on 9 August 2022.

That left Miss S out of pocket. She'd sent a total of £30,075, and only received back a credit of £9,348 from L, plus £15,037.50 that Santander had refunded. The net loss remaining equated to a figure of £5,689.50.

Miss S referred her complaint about Santander to this service, explaining she thought the bank should have fully reimbursed her.

Our Investigator reviewed everything afresh. He initially said he thought Miss S should have been fully refunded by Santander. Santander didn't agree. In summary, it said:

- Under the terms of the CRM Code it was not required to fully refund where the customer had paid without having held a reasonable basis for believing what they did at the time.
- Santander considered that in the circumstances, Miss S hadn't held a reasonable basis for believing what she did at the time of each payment.
- It thought the returns Miss S was shown were clearly too good to be true
- Miss S had carried out little to no independent research prior to making her payments
- Had Miss S checked Companies House, she would have seen under type of business that neither T nor L was listed as a financial firm or anything otherwise that might be connected to investment business or financial trading on behalf of others.¹
- Miss S accepted she'd known from the outset that T was not regulated by the FCA at the point she was investing, yet still proceeded despite her professed lack of investment experience.
- Miss S had received emails from T which had said it was imperative that she did not tell her bank the true reason for the payments. Rather than divulging the payment was for an investment she should pick something else, such as Bill or Invoice, otherwise T's bank would freeze T's account.

¹ T was listed as being: 62020 - Information technology consultancy activities, and 70229 - Management consultancy activities other than financial management. L is listed as being 46190 - Agents involved in the sale of a variety of goods, and 46900 - Non-specialised wholesale trade.

- While Santander had initially accepted this had been an APP scam covered by the CRM Code, it now believed it had been mistaken in saying this.
- Santander said it was premature to reach a conclusion whether one or both of the payments made by Miss S were APP scams covered by the CRM Code. There was an active Police investigation, and it was unclear whether the funds paid had been used for the intended investment purpose.
- It said that funds paid to L might be recoverable as a result of the Police investigation, as it appeared L's account had been frozen holding substantial funds.

The Investigator reviewed everything in light of Santander's further comments. He wrote to both parties giving an updated outcome. He thought Santander's original offer to refund 50% of the payments made was fair and didn't think Santander needed to do more. He thought it was fair that Miss S should share part of the loss, and that she hadn't taken appropriate steps in despite several red-flags that should have prompted concern.

Miss S didn't agree. She said other investors had received full refunds and so should she. She said she had not tried to mislead the bank or lied about the purpose of the payments. It was relevant that her friend (the work colleague) had withdrawn his full funds before Miss S had invested herself. This had reassured her that in her belief that what she had been told about the investment was true. While she had questioned the levels of likely returns, at no point did she believe her invested capital would be at risk, she'd been given a guarantee.

Santander reiterated that it considered that it was too early to conclude that this had been an APP scam.

As no agreement has been reached, I have been asked to review everything afresh and make a final decision on the matter.

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.

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.

In broad terms, the starting position at 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.

As noted above, where a payment was made as the result of an APP Scam, then the voluntary CRM Code can require the reimbursement of customers. But Santander says that the CRM Code should not currently be applied to Miss S's payments pending the outcome of a police investigation into the trader. It further argues that even were the CRM Code to apply, Miss S would not be due full reimbursement because she made the payments without holding a reasonable basis for believing what she did at the time.

I'll consider the issues raised in sequence.

Can this case be fairly determined now?

Santander gave its initial decision to Miss S's scam claim under the CRM Code in 2022. At that point it accepted this had been an APP Scam and that the code applied. It reimbursed Miss S half of the money she'd paid.

It now says this was an error and that it is premature to reach a conclusion about whether either payment made by Miss S was an APP Scam covered by the CRM Code.

I've carefully considered this (and associated) arguments raised by Santander. I understand Santander considers I should wait on the conclusion of an ongoing police investigation into Company T and Company L.

As a starting point, the CRM Code requires firms to make a decision about reimbursement without undue delay.²

The CRM Code does contain provision for a firm to delay giving its answer to a scam claim in some instances.³ But that provision relates to delaying giving an answer and has no practical application where an answer under the CRM Code has already been given (as has happened here).

Furthermore, the CRM Code doesn't make criminal prosecution of the alleged scammer(s) a necessary requirement in determining if something is an APP scam. A balance of probabilities finding is sufficient. So, for example, the code doesn't stipulate waiting for criminal prosecution to establish that what occurred was an APP Scam covered by the code.

Santander has also explained it considers the losses that might be due to Miss S (and other investors) are not yet clear. In part that relates to the possibility that funds paid to Company L may ultimately be recovered following a police investigation.

The CRM Code has a stated objective of helping to protect a greater proportion of customers from the impact of APP scams, through both prevention and reimbursement. I am conscious that in a case of alleged fraud on this scale, a police investigation and charging decision can easily take several years. I consider that delaying reimbursement pending the potential recovery of funds elsewhere would fail to meet the code's objective of protecting customers from the impact of scams. Santander has the option of making it a condition of the settlement that any recovered funds can be assigned to it, avoiding the potential for double-recovery.

All considered, I'm satisfied there is no reason contained within the provisions of CRM Code that would mean I should not proceed to decide this complaint now.

Was this an APP Scam covered by the CRM Code?

In Miss S's case, I'm being asked to decide if Santander, under the terms of the voluntary CRM Code, is liable to refund her because she was the victim of an APP Scam. I am doing so applying what I consider to be the balance of probabilities based on the available evidence.

I find the evidence is persuasive that Miss S's funds were lost to an APP Scam covered by

² "Firms should make the decision as to whether or not to reimburse a Customer without undue delay, and in any event no later than 15 Business days after the day on which the Customer reported the APP scam." [CRM Code - R3(1)]

³ "If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision." [CRM Code - R3(1)(c)]

the CRM Code. Furthermore, I'm persuaded that the amount Miss S has lost to this APP Scam can be determined, again by the application of the balance of probabilities. I will explain why I consider this to be the case.

Part of the information I have reviewed in making this finding has been provided by the two banks that Miss S paid the funds to. This information was shared in confidence⁴ and I will not detail it here. In summary though, as it relates to this complaint, no legitimate trading activity took place using Miss S' funds paid. The evidence from that bank is consistent with the operation of a so-called Ponzi scheme – whereby early investors receive returns which are paid from later investments.⁵

Under the CRM Code, the definition of an APP Scam includes payments where “The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”

On a balance of probabilities, I find that Miss S sent her funds to the trader believing this was a legitimate investment, but that the trader's purpose in obtaining those funds was not to invest those funds but was instead fraudulent. Santander has not provided any persuasive evidence that would contradict this finding.

I'm satisfied that this was more likely than not an APP Scam and that the CRM Code should apply. While I appreciate a police investigation may reveal more detail, I'm of the opinion that this was an APP Scam, and that Miss S suffered a quantifiable financial loss through these payments (that loss being the value of the payments she made less the returns she received).

Does Santander need to reimburse Miss S under the terms of the CRM Code?

Santander has argued that if the CRM Code does apply to Miss S's case, it should not be liable to fully reimburse her, because one of the possible exceptions to reimbursement applies.

The relevant reimbursement exception states that a firm may choose not to reimburse a customer if it can establish:

- in all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without a reasonable basis for believing that: (i) the payee was the person the Customer was expecting to pay; (ii) the payment was for genuine goods or services; and/or (iii) the person or business with whom they transacted was legitimate. [R2(1)(c)]*

I've considered if Santander has established this and can rely on this exception.

This is a finely balanced matter for me to determine. I am, for instance, aware that the Investigator at various points expressed conflicting opinions on this point. But I have carefully considered the available evidence afresh to reach my findings.

⁴ The relevant rules can be found in the Dispute Resolution chapter (3) of the Regulator's Handbook of Rules and Guidance (DISP). At DISP 3.5.9R, the rules state that “the Ombudsman may: [...] (2) accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate”.

⁵ As far as possible, redacted information has separately been shared with Santander. However, the extent of what can be shared is limited because it has been accepted in confidence, and I have relied on the full information I have seen in accordance with the provisions of DISP 3.5.9R.

Firstly, while there were a number of features of this investment that might have prompted concern, there were factors that acted to reassure Miss S in each instance.

She explains how she'd first been made aware of Company T through a colleague at work. As she relays this, she did not invest at first, and instead waited to see how the colleague's investment proceeded.

Only after seeing the results her colleague had achieved and that he'd apparently received back the money he'd invested together with profits, did Miss S invest.

I'm persuaded by Miss S's testimony here. I think the power of a personal recommendation can be compelling. This isn't a situation where she was simply relying on the word of a stranger – she knew this individual as a colleague. That meant their experience reasonably had a greater impact on her.

The rate of return and capital guarantee were exceptional features, and arguably too good to be true. But I cannot look past the fact that Miss S had experience of seeing the results of the investment at close hand. I'm persuaded by what she says about this. On balance, I don't think it was unreasonable for her to allow that experience and the recommendation of her colleague to outweigh any concerns she might have had about the returns being offered. The evidence before her appeared to demonstrate the investment was plausible.

For the second payment there were additional factors present. The payment had to be made to a different payee than the first payment. That payee bore no obvious connection to the first payee. And when Miss S received the payment request email, it stated that she needed to state the purpose of the payment was something other than investment to avoid the recipient's account being frozen by their bank.

By the time Miss S made the second payment her initial belief in the validity of the investment had been reinforced by her own personal experience of seeing regular statements showing the investment performance. She'd further been able to withdraw a substantial sum in profits. I can understand why she'd reasonably have thought by this point that the investment was as it appeared, and been willing to accept what she was being told about the change in payee details and the altered payment purpose without particular cause for concern.

Simply put by that point the investment had in her experience been operating for around a year, seemingly without issue, delivering the expected profits and permitting her to make a withdrawal. The balance of the evidence meant a scam risk undoubtedly seemed unlikely to her. I don't think that was a wholly unreasonable conclusion to have drawn in the circumstances at that time.

In terms of the specific exception to reimbursement, I think that for each of the two payments at the point she made them, Miss S did not lack a reasonable basis for believing she was paying for a legitimate investment opportunity to that company's own account or through a partner company's account. I'm not persuaded that Santander has been able to establish otherwise.

And for the avoidance of doubt, I do not consider that Santander can correctly apply any of the other possible reimbursement exceptions under the CRM Code.

Recovery of funds and the possibility of double-recovery

I acknowledge Santander's contention that should any recovery of Miss S's funds become possible (through either a later criminal conviction of the trader or any other routes) then it

would not be fair or equitable to put her in a position of double recovery. In saying that, I don't consider this possibility should prevent Santander from reimbursing her under the CRM Code now (nor would it have at the time she first reported the matter to Santander).

However, I consider it is fair and reasonable that Santander can choose, if it wishes, to obtain an undertaking from Miss S to entitle it to any money recoverable elsewhere. In other words, Santander may require Miss S to enter into an undertaking to assign to the bank any rights to any monies she might elsewhere be entitled to recover in respect of this loss.

If Santander asks Miss S to provide such an undertaking, payment of the reimbursement awarded in this decision may be dependent upon provision of that undertaking. Santander may treat Miss S's formal acceptance of the terms of my final decision as being sufficient for this purpose. Alternately, Santander would need to meet any costs in drawing up an undertaking of this type.

Interest award

I cannot know for certain how Miss S would have used this money had Santander refunded her when it first considered her claim under the CRM Code. But if Santander had refunded the money when it ought reasonably to have done then Miss S would not have been deprived of it for the time she has. So, Santander should also pay interest on the loss at a rate of 8% simple per year. This interest should be calculated from the date it first declined her claim under the CRM Code until the date of settlement.

In summary

I therefore find that this case is one on which I can reach a fair and reasonable outcome without further delay. I find that the payments Miss S made are ones that were made to an APP Scam and covered by the CRM Code. I find that Santander has been unable to establish that it can apply any of the reimbursement exceptions under the CRM Code. It follows that Santander should have fairly and reasonably reimbursed Miss S in full when she made her scam claim.

Putting things right

Given the reasons I've explained above, I'm minded to conclude that Miss S ought reasonably to have been fully refunded under the CRM Code. To put matters right I intend to require Santander UK Plc to pay Miss S:

- the remaining amount Miss S lost to this scam, being the amount of £5,689.50. This represents the loss outstanding from the two payments she made, having deducted amounts already returned or refunded to her. The bank should do so within 28 days of receiving notification of Miss S's acceptance of my final decision; plus,
- interest at the simple rate of 8% per year on the above amount (less any tax properly deductible) to be calculated from the date Santander UK Plc first declined her claim under the CRM Code until the date of settlement.

Miss S agreed with my provisional decision but Santander didn't. It made further submissions in response. In summary Santander said:

- The police investigation remains ongoing, although Santander accepted it could not rely on provision R3(1)(c) under the CRM Code, given it had already made a decision to reimburse Miss S 50% of her loss with interest at the account rate in August 2022.
- It thought that there was simply not enough information to determine whether this

- was an APP scam or a failed investment (and therefore a private civil dispute).
- In particular without knowing how the trading scheme was intended to operate, it couldn't be determined that it had been fraudulent.
 - The police investigation would be able to confirm if the trading scheme had been operating fraudulently. Even after this is determined to be a scam, forensic accounting and/or criminal asset recovery steps would need to complete in order to establish who is entitled to what monies.
 - There may have been an element of legitimate investment at the stage the scheme was first set up, and that might have applied to Miss S.
 - In any event, Miss S should share blame for making the investment. She failed to undertake due diligence prior to making the payment. She should have doubted that the investment was in commodities, but the companies she paid did not appear to be investment related, which she'd have found had she checked Companies House.

While this is a broad summary of the arguments made by Santander in response to my provisional decision, I have taken everything that the bank has said into consideration when reaching this 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.

I've considered Santander's response, but this does not change the opinion I explained in my provisional decision.

The question of whether our service can appropriately determine complaints relating to this scheme is one that has been covered in several previous decisions issued by our Service, as well as in discussions between our Service and Santander.

I acknowledge Santander's strength of feeling on the matter. But I don't think there is anything additional to add at this point above the reasoning that has already been provided to Santander in my provisional decision, and in other decisions, on the reasons why our Service considers it appropriate to determine these complaints now.

The further points Santander raises in response to my provisional decision are mostly those already addressed in my provisional findings. There is little to add to what I have said there.

However, additionally the bank queries why Miss S reasonably believed she was buying gold when her initial payment went to a company listed on Companies House as providing IT services. The nature of the investment as Miss S appears to have understood it at the time was trading in currencies and commodities. But I've not seen anything to make me think she believed the trader would provide her with the physical currency or commodity it was supposedly trading in.

As I explained in my provisional findings, I'm persuaded that Miss S was convinced of the legitimacy of Company T by the power of a personal recommendation from someone she worked with. I find this would have been convincing in the circumstances. The trading described to her was computer-based trading, so even had Miss S noticed the industry classification for the limited company, IT services and consultancy might not have prompted her to have any significant concerns. I also explained in my provisional findings why I thought she had a reasonable basis for believing what she did about the later payment to Company L, and there is nothing in Santander's comments in response that lead me to reach a different conclusion on that point.

While I've carefully reviewed the response the bank provided, I'm not persuaded that there are any new arguments or information contained in the response or anything that reasonably could prompt me to reach a different out than that I set out in my provisional decision and for the same reasons.

Putting things right

For the reasons I've explained above, I find that Miss S ought reasonably to have been fully refunded by Santander under the terms of the CRM Code. To put matters right I require Santander UK Plc to pay Miss S:

- the remaining amount Miss S lost to this scam, being the amount of £5,689.50. This represents the loss outstanding from the two payments she made, having deducted amounts already returned or refunded to her. The bank should do so within 28 days of receiving notification of Miss S's acceptance of my final decision; plus,
- interest at the simple rate of 8% per year on the above amount (less any tax properly deductible) to be calculated from the date Santander UK Plc first declined her claim under the CRM Code until the date of settlement.

Santander may require Miss S to enter into an undertaking to assign to the bank any rights to any monies she might elsewhere be entitled to recover in respect of this loss. If Santander asks Miss S to provide such an undertaking, payment of the reimbursement awarded in this decision may be dependent upon provision of that undertaking. Santander may treat Miss S's formal acceptance of the terms of my final decision as being sufficient for this purpose. Alternately, Santander would need to meet any costs in drawing up an undertaking of this type.

My final decision

I uphold Miss S's complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 25 April 2025.

Stephen Dickie
Ombudsman