

The complaint

Mr W complains that Santander UK Plc did not reimburse the £50,000 he lost to a scam.

What happened

Mr W was interested in investing and a friend and business colleague of his introduced him to an investment opportunity with a company I'll refer to as 'V'. This friend told Mr W they had already invested and were making good returns. Mr W has said he carried out various checks on V and other parties associated with it, as well as attending webinars and zoom meetings with V's representatives. Mr W also received brochures and FAQ's from V, and was aware of other investors who appeared to be having success with their investments.

Mr W asked various questions about V's operations and received answers that he felt were satisfactory, so he decided to invest. Mr W made two payments of £25,000 each to one of the directors of V in November 2022.

After a few months, Mr W made a request to withdraw some of his profits. He was told by V that the FCA had halted all withdrawal processes. Mr W then discovered that the Financial Conduct Authority (FCA) and the Luxembourg equivalent (the CFSS) had issued warnings about V. Ultimately, Mr W has never received a return of his funds.

Mr W raised a scam claim with Santander. It issued a final response letter in December 2023 in which it said it did not feel it could reach a decision on whether to reimburse Mr W given that there was an ongoing investigation by the FCA into V's activities.

Mr W referred his complaint to our service and our Investigator looked into it. Having reviewed the complaint, they did not feel it was reasonable for Santander to delay any longer in making a decision on Mr W's complaint, given the evidence that was available by that time. They were also satisfied that Mr W had been the victim of an APP scam. They therefore assessed the complaint under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code, which was in force at the time of the payments Mr W made.

They felt that Mr W had a reasonable basis for believing the investment was genuine, so they did not think an exception to reimbursement applied. They therefore recommended a full refund of the £50,000 payment, as well as 8% simple interest from the date of their view to the date of settlement.

Mr W accepted the findings, however Santander did not. As an informal agreement could not be reached, 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.

Is it appropriate to determine this complaint now?

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

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which is the balance of probabilities).

In order to determine Mr W's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mr W was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that Mr W first raised his claim with Santander in August 2023 and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr W an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm aware the above processes might result in some recoveries for V's investors; in order to avoid the risk of double recovery, I think Santander would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr W under those processes in respect of this investment before paying anything I might award to him on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the FCA's investigation, or any criminal investigations that might follow that, for me fairly to reach a decision on whether Santander should reimburse Mr W under the provisions of the CRM Code.

Has Mr W been the victim of an APP scam, as defined in the CRM Code?

It isn't in dispute that Mr W authorised the two £25,000 payments that are the subject of this complaint. Because of this, the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transactions. But he says that he has been the victim of an authorised push payment (APP) scam.

Santander has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

This Code does not apply to:

b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier.

I've therefore considered whether the payments Mr W made to V fall under the scope of an APP scam as set out above. Having done so, I think that they do.

I say this because our service is now aware of a number of issues related to V, which suggest to us it is more likely they were carrying out a scam. Specifically:

- We are now aware that V's claims of being at least in the process of being regulated with relevant bodies such as the FCA in the UK and the CSSF in Luxembourg are false.
- There is no evidence to substantiate V's claims around the profits they say they were able to generate via Forex trading.
- Less than half of the funds sent to the two founders was potentially used for the intended purpose of Forex trading. Whereas Mr W sent funds to V with the understanding they would immediately be moved to a trading account to be used in Forex trading.
- V's account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with a trading exchange and that it was regulated.
- We have also seen evidence that none of the funds sent to V's business accounts was used for the intended purpose of trading in Forex.

Considering all of the above, I do not think V was using investor funds, such as Mr W's £50,000, for the purpose they were intended for. And I think this difference in purpose is down to dishonest deception on V's part. It follows that I think this complaint meets the definition of an APP scam as set out in the CRM Code above.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. In regard to the FCA's investigations, there is no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

Is Mr W entitled to reimbursement under the CRM Code?

I've considered whether Santander should refund Mr W under the provisions of the CRM Code. Under the CRM Code the starting position is that a firm should reimburse customers who have been the victim of an APP scam, except in limited circumstances. These circumstances include (as is relevant to this complaint) where the firm can establish that the

customer made the scam payments without a reasonable basis for believing that they were for genuine goods or services; and/or that the payee was legitimate.

So, I've thought about whether Mr W had a reasonable basis to believe V was legitimate and was providing a genuine investment product. In doing so, I have considered that the investment was recommended to Mr W by a colleague and friend, who was also someone that Mr W had previously taken advice from regarding successful investments. This person had also attended a seminar hosted by V's representatives and had told Mr W they had been able to withdraw returns.

In addition, Mr W received a brochure with an FAQ which looked to be professional and matched what other investors had received, as well as attending webinars and zoom meetings about the investment himself. And Mr V did ask questions about how V was regulated, and carried out his own checks on what he was told and on the individuals involved in the investment, and what he found satisfied him that V was legitimate. Mr W has also said that the returns he was told he might receive were in line with what he had seen from some other funds around that time.

So, given what Mr W had been told and had seen, and what he had found out himself, I think there was enough to reasonably convince Mr W that this was a genuine investment he could trust. With this in mind, I don't think Mr W made the payments without a reasonable basis of belief that V and the investment itself was genuine. I therefore do not think Santander can apply an exception to the reimbursement, so it should reimburse Mr W in full.

Putting things right

To resolve this complaint Santander should reimburse Mr W the £50,000 in full.

It should also apply 8% simple interest from the date of the Investigator's view to the date of settlement. I say this because the information our service has relied upon to uphold Mr W's complaint was not readily available to Santander when the scam claim was first raised. So, it would not have been able to identify the issues that led to the complaint eventually being upheld.

As there is an ongoing investigation by the FCA it's possible Mr W 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 £50,000 investment before paying the award.

If Santander elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr W for their consideration and agreement.

My final decision

I uphold this complaint. Santander UK Plc should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 June 2025.

Sophie Mitchell
Ombudsman