

## **The complaint**

Mrs S complains that Santander UK Plc ('Santander') won't refund the money she says was lost as the result of a scam.

## **What happened**

In 2021, Mrs S became aware of an investment opportunity through a company I'll refer to as X. She found out about it from an old colleague of her husband's, who was a financial controller. The colleague had previously invested with X and received both returns and capital as agreed.

Mrs S believed it was a foreign currency investment and expected a return of 7-9% per month.

Mrs S made a payment of £10,000 from her Santander account in October 2021.

In June 2022, Mrs S became aware of problems with X, and its associated companies, and asked to withdraw her investment. Mrs S has been unable to withdraw her investment and believes it was a scam.

Mrs S reported the scam to Santander in 2022. Santander declined to give Mrs S an answer on her fraud claim, due to an ongoing police investigation, saying they would give an answer on the conclusion of that investigation.

Mrs S raised a complaint with Santander, dissatisfied with the answer she'd received and the lack of updates on her fraud claim. Santander accepted that they hadn't kept her updated and paid her £50, but still declined to give her an answer on her fraud claim.

So, Mrs S raised a complaint with our service.

An investigator looked into Mrs S's complaint and upheld it. The investigator was satisfied that Mrs S had been the victim of an APP scam which was covered by the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). The investigator wasn't satisfied that Mrs S should share any responsibility for her loss, so recommended a full refund.

Santander disagreed with the investigator's opinion and raised the following points:

- The documentary evidence we're relying on is incomplete. The contract appears to be linked to a wider communication, and it's unclear if we have the whole document.
- Evidence from the police suggests some legitimate trading by X initially, how do we know that Mrs S' funds weren't used for the intended purpose?
- Mrs S told them she didn't check Companies House, but told us that she did, and it's unclear why there is a discrepancy.
- If Mrs S had checked the FCA's website she would've seen X was unregulated. If

she checked Companies House, she would've seen the nature of their business was IT Consultancy.

- The Confirmation of Payee result was that the account name didn't match with the payee name. Also, Mrs S selected that the payment purpose as "paying for a service" rather than "investment".

As the case couldn't be resolved informally, it was passed to me to review.

Having reviewed the case, I reached the same overall answer as the investigator. But I intended to change the redress slightly and address some new points. So, I issued a provisional decision and gave both parties the chance to provide any further evidence they wanted to be considered before I issued a final decision.

### **My provisional decision**

In my provisional decision I said:

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.

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 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.

#### Is it appropriate to reach a decision on Mrs S' case now?

Santander told Mrs S and our service it hasn't reached a decision under the CRM Code as the payment Mrs S made is the subject of an ongoing complex investigation. Santander considers it would be fair to wait for the outcome of this investigation before making a decision on whether to reimburse Mrs S. I have considered this, but I'm satisfied that it is not necessary for me to do this in order to reach a fair and reasonable decision about Mrs S' complaint.

The CRM Code says 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.

I ultimately have to decide whether it is fair and reasonable for Santander not to have upheld Mrs S's claim for reimbursement of her loss. 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 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 Mrs 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 Mrs S was the victim of a scam rather than a failed investment.

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 Mrs S'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 not clearly articulated whether (and if so how) it considers this may be the case. It's not clear if Santander is concerned that any investigation and subsequent court action regarding X's actions may lead to Mrs S being compensated twice for the same loss, i.e. by Santander and by the courts. I don't know how likely it is that any funds will be recovered as part of those proceedings. 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 Mrs S as well. Santander can ask Mrs S to provide an indemnity to cover any future funds she is paid as a result of the ongoing investigation or subsequent court action, so I'm not persuaded that this is a reasonable barrier to it reimbursing her 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.

#### Is Mrs S' payment covered by the CRM Code?

Santander are a signatory of 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.

The CRM Code 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 Mrs S made the payment meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mrs S thought this purpose was legitimate.
- The purpose the recipient (X) had in mind at the time of the payment and whether this was broadly in line with what Mrs S 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.

In reaching an answer on what purpose X had in mind, I've considered the wider circumstances surrounding X, its directors and any linked businesses. The key information to this case is:

- X and its linked companies were not authorised by the FCA to carry out trading, so its operations lacked an important element of legitimacy. It was required to be

authorised to do the activity it was carrying out and it wasn't. It went so far as to lie to some potential investors about it being in the process of getting FCA authorisation whilst it was 'trading' – the FCA doesn't allow businesses to carry on regulated activities without being authorised. So, X wasn't being honest with potential investors.

- We've received third party information which I can't share for data protection reasons. But this does not suggest that legitimate investment activity was being carried out by X at the time Mrs S made her payment. Whilst there is evidence X initially did carry out some trades on the first account (there were not any on the second beneficiary account), it doesn't necessarily follow that it was a legitimate enterprise. So, it doesn't support that the funds were used for their intended purpose.
- Further concerns centre around the owner of X (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 X despite not officially being listed as the director of the business. He also 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, X was listed as an 'IT consultancy' business on Companies' House and not a financial services firm.

Taking all of these points into consideration as a whole, I'm satisfied there is sufficient evidence to say it's more likely than not, that Mrs S' funds weren't used in the manner agreed by X and that X obtained the funds by dishonest deception. On that basis, I'm satisfied that Mrs S' payment meets the definition of an APP scam as per the CRM Code. As I'm satisfied that the CRM Code does apply to the payment Mrs S made, I've gone on to consider whether she is entitled to a refund under the CRM Code.

#### Is Mrs S entitled to a refund under the CRM Code?

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 services; and/or the person or business with whom they transacted was legitimate.

\* there are further exceptions outlined in the CRM Code, but they don't apply to this case.

#### Did Mrs S have a reasonable basis for believing the investment was genuine?

I'm satisfied in this case that Mrs S did have a reasonable basis for believing this investment was genuine, I'll explain why.

It's unclear whether or not Mrs S checked Companies House in relation to X. Santander say Mrs S told them she did, however Mrs S has told us that she didn't. Santander also refer to a separate company in relation to the investment, but this hasn't been referenced by Mrs S in her submission to our service and, when asked, she said she hadn't heard of this company. Santander can provide a copy of the call recording where Mrs S provided this information, in response to this provisional decision.

However, I'm not satisfied that even if Mrs S had checked Companies House that she is likely to have known what to look for, other than X being a registered UK company – which it was at the time she made her payment.

In this case, Mrs S was recommended the investment by a previous colleague of her husband's. That colleague was a financial controller and Mrs S says she thought that he was financially savvy as a result of his role. Also, that colleague had previously invested with X successfully, receiving both promised returns and capital investment back.

I think this recommendation by someone Mrs S knew and trusted plays a fundamental role in Mrs S having a reasonable basis of belief.

Santander say Mrs S was presented with a Confirmation of Payee "no match", meaning the account name and the payee name didn't match. Mrs S doesn't remember seeing this and says that she's had a "no match" previously on genuine payments when the name is only slightly different - so seeing this wouldn't have concerned her.

I appreciate that the documentation Mrs S has given us doesn't appear to be the entirety of what she was given. However, Mrs S made this investment over four years ago and she has limited evidence to provide. Not having this documentation doesn't change my position with regards to Mrs S having a reasonable basis for believing this was genuine.

Overall, I'm satisfied that based on the information available to Mrs S at the time she made the payment, she did have a reasonable basis for believing the investment was genuine. I think any concerns or questions over the return being offered or the capital being guaranteed, which I agree is not in line with the type of investment it was and the risk that would normally carry, was outweighed by the experience of a personal recommendation she received from someone who had previously invested.

So, I'm not satisfied that Santander can rely on this exception to reimbursement. On that basis, Mrs S is entitled to a full refund under the CRM Code.

#### The interest award

The investigator awarded interest from the date Santander declined Mrs S' claim under the CRM Code. However, Santander didn't give Mrs S an answer on her claim, as they were awaiting the outcome of the ongoing investigation.

In these circumstances, I think it's fair for Santander to calculate interest from 15 business days after Mrs S reported the scam until the date of settlement. This is the timeframe that the CRM Code sets for businesses to provide a response to consumers on their fraud claim.

#### The level of customer service that Mrs S received from Santander

Mrs S is unhappy with the lack of updates from Santander while they were considering her fraud claim. Santander accept they could've done better and paid Mrs S £50 compensation. I appreciate that Mrs S was disappointed that Santander didn't provide her with better updates, and this would've been frustrating. However, Mrs S says she reported the scam to Santander on 30 September 2022, and I can see Santander wrote to Mrs S on 14 October 2022, and gave referral rights to our service. So, Mrs S could've come to our service if she wasn't satisfied with the outcome/response that Santander had given her.

In these circumstances, I'm satisfied that the £50 compensation Santander has already paid is fair.

My provisional decision was that I intended to uphold the complaint and ask Santander to refund Mrs S in full and pay interest on the refund of 8% simple interest, calculated from 15 business days after Mrs S reported the scam until the date of settlement.

## **Responses to my provisional decision**

Mrs S responded to say she accepted my provisional decision.

Santander disagreed with my provisional decision, raising the following points:

- It's fair for them to rely on R3(1)(c) and our service is acting prematurely in reaching an answer on Mrs S' case under the CRM Code.
- There is a risk of double recovery and Santander are concerned that Mrs S may not agree to sign an indemnity. Even if she did, that they might have difficulty in enforcing it.
- Santander shouldn't be held liable for 100% of Mrs S' loss. Mrs S didn't do appropriate checks and relied on what her husband told her. Mrs S should've done checks on the "shadow director" who signed the paperwork on behalf of X, had she done so, she would've found he had been declared bankrupt and unable to hold company directorship. On that basis, it's fair for Mrs S to share liability for her loss with Santander.

As both parties have responded and the deadline for responses has expired, I've proceeded with issuing my 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.

Santander has raised the same concern it raised in response to the investigator's view regarding its ability to rely on R3(1)(c). As clearly explained in the provisional decision, I'm satisfied that I have enough evidence in order to reach a fair and reasonable answer on Mrs S' case.

I appreciate that Santander has concerns that Mrs S may benefit from the scam, if she is fully refunded by Santander and then funds are also recovered and returned to her as a result of the court proceedings. But, it's unclear whether or not any funds will be recoverable as a result of the court proceedings. It wouldn't be fair for Mrs S to benefit as result if they were, so it's reasonable for Mrs S to sign an indemnity which transfers any rights she may have to recovery, outside of this complaint, to Santander. Mrs S has confirmed that she will sign an indemnity, so Santander should liaise with Mrs S in relation to this.

I've considered Santander's reasons why they feel Mrs S shouldn't be fully refunded. I appreciate that Mrs S didn't do independent research, but I'm satisfied that she had a reasonable basis for believing the investment was genuine based on the recommendation by someone known to her husband who had invested and received returns. I would only expect Mrs S to carry out additional research if there were red flags that should've concerned her, and I'm not satisfied that there were in this case. The person who made the recommendation was considered financially savvy by Mrs S because of his employment, which satisfied her that he was making a considered recommendation.

I appreciate that the returns Mrs S was promised were high but, knowing someone she trusted had invested and received the promised returns, would've assured her that it was legitimate - which I'm satisfied was reasonable in these circumstances.

Having carefully considered the points that Santander has raised, I'm still satisfied Mrs S is entitled to a full refund because:

- The evidence suggests it's more likely than not X took Mrs S' payment with a different purpose in mind and that her funds weren't used for the intended purpose. So, I'm satisfied that Mrs S' payment is covered by the CRM Code.
- Under the CRM Code, Mrs S is entitled a full refund unless Santander can show an exception to reimbursement applies, and I'm not satisfied that Santander have shown an exception applies. For the reasons given above, I'm persuaded that Mrs S had a reasonable basis for believing that the investment was genuine when she made the payment.

As Mrs S has been without the use of the money, she is entitled to interest on the refund calculated at 8% simple interest per year. This should be calculated from 15 business days after Mrs S reported the scam to Santander, until the date of settlement.

Santander should've provided a better level of service to Mrs S and kept her updated on her fraud claim. But I'm satisfied that the £50 compensation they've already paid is fair in the circumstances.

### **Putting things right**

To put things right I require Santander UK Plc to:

- Refund Mrs S in full, being £10,000, and
- Pay interest on that refund of 8% simple per year, calculated from 15 business days after Mrs S reported the scam 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 considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs S how much it's taken off. It should also give Mrs S 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 and require them to compensate Mrs S, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 8 May 2025.

Lisa Lowe  
**Ombudsman**