

The complaint

Mr S complains that Santander UK Plc hasn't refunded his after he fell victim to a scam.

What happened

I issued a provisional decision for Mr S' complaint on 23 April 2025. I've included a copy in *italics* as part of this final decision, so it can be referred to.

As the PD is included, and it sets out all the background detail, I won't repeat the circumstances of the complaint here. Instead, I'll deal with what's happened since the PD was issued.

Both parties have now had the opportunity to reply to the PD:

- Mr S accepted the findings;
- Santander didn't accept the findings, but offered no further information, evidence, or argument to support a different outcome.

It's now for me to provide 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.

Having done so, I'm upholding the complaint in line with the findings set out in my PD.

As Mr S has accepted, and Santander has offered no further reason that I might consider, there's no need for me to explain my findings further. They remain the same as those set out in my PD, which can be referred to below.

Putting things right

On Mr S' confirmed acceptance, Santander must:

- Refund 50% Mr S' outstanding loss to the scam (£120,000 minus any returns paid from L or S); and
- Pay interest on that sum at 8% simple per year, calculated from the date the claim was declined under the Code to the date of settlement.

My final decision

I uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 5 June 2025.

My provisional decision

I've considered the relevant information about this complaint.

I'm reaching a different outcome to that of our investigator, though the complaint is still to be upheld. As the redress is changing, it's necessary for me to issue a provisional decision so both parties can provide further submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is 7 May 2025. Unless the information changes my mind, my final decision is likely to be along the following lines.

If Santander UK Plc accepts my provisional decision, it should let me know. If Mr S also accepts, I may arrange for the complaint to be closed as resolved at this stage without a final decision.

The complaint

Mr S complains that Santander UK Plc hasn't refunded him after he fell victim to a scam.

What happened

The background to this complaint is well-known to both parties and so I'll only provide a summary of key events here.

Mr S was contacted by an investment broker in March 2020 after he interacted with a social media advert.

Mr S discussed potential investment options with the broker and was given details about a company I'll call L. Mr S understood L was involved in a space centre in the UK which was seeking investment.

L was offering a bond with a 9% return on investment. Mr S decided to invest, and he sent £20,000 to L. The money was sent to an intermediary business that was FCA regulated. And Mr S' investment was then passed from the intermediary to L.

Mr S received an interest payment as expected a month later. He was then contacted by the broker again, offering a further opportunity to invest, this time with a company called S. Having listened to the details Mr S decided to invest again, this time sending a total of £100,000 over four days in April 2020. Again, the money went via the intermediary before arriving with S.

Although all appeared genuine to Mr S at the time, and further returns were received over the months that followed, things started to go wrong with L and S. The promised returns went unpaid, there were supposed buyouts, a lack of communication, and ultimately the schemes collapsed.

Mr S told Santander what had happened, seeking a refund of his loss. It considered the claim but told Mr S it wouldn't refund him. That was on the basis it believed Mr S hadn't been scammed, but instead had a civil dispute with L and S as a result of a failed investment.

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.

Having done so, I'm upholding it. I'll explain why.

In broad terms, the starting position at law is that a business 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.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes, and best practice standards, 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 Lending Standards Board's Contingent Reimbursement Model Code ('the CRM Code'), which Santander has signed up to.

The CRM Code provides additional protection from APP scams, but only in certain circumstances. For example, the CRM Code only applies where the characteristics of the victim's payment meets the CRM Code's definition of an APP scam.

Is this a scam as per the CRM Code?

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: "another person for what they believed were legitimate purposes, but which were in fact fraudulent."

In order for this to apply, there are a number of requirements of which we'd need to be satisfied as well as information we'd need confirmation of. Firstly, we need to consider the purpose of the payment and whether Mr S thought this purpose was legitimate.

We then need to consider the purpose the recipient had in mind at the time of the payments and whether this was broadly in line with what Mr S understood to be the purpose of the payment.

Lastly, if we determine that there was a significant difference in these purposes, we'd need to be satisfied that the purposes were substantially different as a result of dishonest deception.

What was the purpose of the payment? Did Mr S think this was legitimate?

From what we know, Mr S was making the payments to L and S in return for a fixed rate bond to be invested in a space centre and property development. I can't see anything which would suggest that Mr S didn't think this was legitimate.

What was the purpose the recipient had in mind? Was that in line with what the consumer thought?

When looking at the purpose question here, I've taken account of the wider circumstances surrounding the business and its director links and other businesses. After reviewing all the available evidence on cases linked to L and S these are the key findings:

- The director of L and S and other linked businesses has been disqualified as a director on Companies House for eight years by the secretary of state.*
- The director has failed to provide liquidators with accounting records for liquidated businesses and has said he will not be providing these.*
- The FCA issued a warning about the linked businesses in March 2020 saying they were providing financial services without authorisation.*
- Despite saying S had assets of £34m, it never filed any accounts and wasn't independently audited at any point. There was a further company that took over S which also never filed any accounts, and the director was the same person. This company contacted investors to say their money would be safe despite the FCA regulated intermediary going into liquidation, and then it cut contact with all investors.*
- Police Scotland are now investigating the director, L and S, and other linked companies.*
- In some instances, S' brochures claimed to have agreements in place with Edinburgh City Council to lease local authority properties – ECC have now confirmed to our service that it had no record of any such contract or agreement with S or the director.*
- There is no evidence to suggest L, S or the linked companies were operating legitimately. There is no evidence of any investments made. Some consumers received small monthly returns while others received no returns at all.*
- The Insolvency Service has also made comments following its investigation into L, S and the linked companies confirming investors were routinely deceived.*

Ultimately there's no evidence which demonstrates that victim's funds were used in the manner agreed or prescribed by the businesses.

It's worth noting here that the payments made by Mr S did go via an intermediary, a then FCA regulated firm. Santander has previously argued that this means the CRM Code doesn't apply, as the transactions were between Mr S and the intermediary, rather than him and L or S. But I'm satisfied the payment journey here doesn't mean the CRM Code doesn't apply. Rather than setting out all the detail here, it makes sense to refer Santander to the published decision under reference DRN-4053598 (<https://www.financial-ombudsman.org.uk/decision/DRN-4053598.pdf>). Santander will see the circumstances are almost a mirror image of Mr S' and the resulting findings are the same. It has also already been provided with a copy of this decision.

L and S confirmed receipt of Mr S' funds within days of them being sent. This supports there was a pre-existing relationship for funds to be moved through the intermediary and that there was no involvement by Mr S. And it confirms that those funds were moved through quickly, without Mr S having any control of them.

Furthermore, this service has considered a large volume of complaints involving L and S, and so have been able to satisfy ourselves that the quick onward transmission of funds was the modus operandi and an existing relationship between the intermediary and L/S was well-established.

The payment of some returns also doesn't overturn the other persuasive evidence that this was a scam. The payment of some returns is a common feature of many investment scams.

Was the difference in purpose the result of dishonest deception?

The lack of co-operation by the director of both companies with the liquidators and the disqualification of the director persuade me that the inducement of payment by the victims was as a result of the director's and his businesses' dishonest deception.

In the absence of any convincing evidence that L or S were carrying out investments for the victims, I believe that the payments meet the definition of an APP scam, as per the CRM Code, and Santander should refund Mr S' losses.

Do any exceptions to reimbursement apply here?

There are two potential exceptions to reimbursement that Santander might rely on to deny a claim under the Code. Though it's made little argument that either should apply, I'll provide some brief findings on those potential exceptions. They can be summarised as:

- The customer ignored an effective warning given by the business at the time payment was being made; and*
- The customer made a payment without holding a reasonable basis for believing it was being made to a legitimate party for a legitimate purpose.*

Santander has presented limited evidence to show an effective warning was presented to Mr S. It's said an investment scam warning was shown and sent us evidence of that warning. But the warning fails to meet the standards for firms regarding effective warnings, which are set out in the Code.

The warning doesn't bring investment scams to life as it fails to address many of the key features, meaning it lacks impact and isn't specific enough. It also doesn't give a good idea of how Mr S might have protected himself, or the consequences of proceeding with the payment.

That being the case, Santander has failed to meet the standards for firms in respect of effective warnings, and it becomes at least partially responsible for the loss.

Santander hasn't said much about Mr S' reasonable basis for belief or lack of it, though it has suggested it thinks the exception could apply. This service knows there were persuasive and convincing elements to this scam. The involvement of seemingly genuine companies, some of which were FCA regulated, would understandably have made the scam convincing.

However, Mr S has said for the investment with L he decided to proceed after one phone call with the broker and that he was never provided with any literature or brochures. Nor was he given an agreement, or a set of terms and conditions, and no paperwork was signed. He didn't carry out any research or checks on any of the involved parties. That being the case, I can't say he had a reasonable basis for believing the investment was legitimate.

Whilst Mr S did then receive some literature and paperwork for the investment in S, it seems he still didn't carry out any other checks. And, although he had received a payment of interest from the investment with L, it would be very difficult to argue he'd moved from a position of having no reasonable basis for belief to then having one.

I've also taken account of what Mr S has said about who he thought S were. He's said he assumed it was a large, well-known multinational communications and advertising company due to similarities with the name. But the names of S and that company are different, and S never held itself out to be that company. A quick check online would have revealed that S and the other company were completely different. That being the case, I can't find that Mr S held a reasonable basis for belief that the investment with s was legitimate.

This means there is responsibility for the loss to be attributed to both Santander and Mr S. So Santander will need to reimburse 50% of Mr S' outstanding loss.

Are there other remedies available to Mr S?

It is true that the FSCS will consider some claims against the intermediary. But not all companies that used the intermediary are to be covered; some are excluded. There's nothing the FSCS has published to say claims linked to L or S will be included.

The Insolvency Service has also publicly stated that the activity S was engaged in was not FSCS protected, setting that out as one of the frequent deceptions S carried out, in that it lied to investors about being covered.

Even if Mr S were able to pursue a claim with FSCS, it and the Financial Ombudsman Service are separate organisations, and the rules governing whether a customer is eligible to receive compensation from FSCS are separate to those which apply to the Financial Ombudsman Service. FSCS will consider the claims submitted to it under the rules set for the FSCS by the Financial Conduct Authority.

Consumers might be permitted to pursue a claim to the Financial Ombudsman Service and the FSCS (should FSCS accept the consumer's claim) involving L or S, and at the same time.

However, should a consumer receive compensation from the FSCS relating to their claim against L or S, the consumer may be required to pay any further compensation to FSCS that they receive from their bank (including as a result of any Financial Ombudsman Service award) relating to the consumer's complaint against L or S. Any questions relating to the terms on which compensation is paid by the FSCS should be directed to it.

Putting things right

Should there be no further change to the outcome following further submissions from either party, and on Mr S' acceptance, Santander should:

- Refund 50% Mr S' outstanding loss to the scam (£120,000 minus any returns paid from L or S); and*
- Pay interest on that sum at 8% simple per year, calculated from the date the claim was declined under the Code to the date of settlement.*

My provisional decision

I intend to uphold this complaint against Santander UK Plc.

Ben Murray
Ombudsman