

The complaint

Mr H complains that Santander UK Plc declined to reimburse him when he says he lost £50,000 as a result of a scam.

What happened

The circumstances of this complaint are well known to both parties, so I will not go into every detail of what happened here. But in summary, Mr H was introduced to an investment opportunity by an acquaintance at a 'wealth education' company, whom he had invested with before. His acquaintance told him about the company, which I will call 'B', saying that he had invested himself and had already seen returns. The acquaintance and Mr H attended online meetings with the Director of B, along with other investors. Persuaded to invest, in February 2021, Mr H sent three payments from his Santander account. These were for £17,500, £17,500 and £15,000. Mr H believed B invested in stocks and shares or forex using an algorithm to 'beat the market'.

Mr H did not receive any returns, nor his initial investments back. The acquaintance who had introduced him to B invited him to an online meeting which included other people he had persuaded to invest in B, and informed them that B were in receivership. Following on from this, Mr H attempted, without success, to withdraw his funds from B. Mr H realised he had fallen victim to a scam and reported the matter to Santander, asking them to reimburse his losses.

Santander considered Mr H's complaint, but declined to reimburse him on the basis that it believed that what happened to Mr H amounted to a private civil dispute, rather than a scam.

Mr H was unhappy with Santander's response, so he escalated his concerns to our service. One of our investigators looked into what had happened and recommended that Mr H's complaint should be upheld. They said that they were satisfied this amounted to a scam, and under the provisions of the Lending Standard Board's Contingent Reimbursement Model ('CRM') Code, Santander were liable to reimburse him in full, along with 8% simple interest, calculated from the date of Santander's initial decision not to reimburse to the date of settlement.

Santander did not accept our investigator's recommendations. It said that there are ongoing insolvency processes in relation to B, as well as an ongoing police investigation which they had not been provided updates on. It said that whilst it had said the case was a private civil dispute, our service understood that in other cases it was relying on R3(1)(c) of the CRM Code which allowed businesses to postpone making decisions under the CRM Code where there were ongoing investigations. It said it would be fair to do the same in this case so that all customers were treated the same way. It questioned some of the evidence our investigator had relied on to conclude this was likely a scam. It also said that Mr H could end up being reimbursed through the insolvency processes and so it would not be right if he got double recovery in this case.

As no agreement could be reached, the case has been passed to me to decide.

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.

When considering what is fair and reasonable, I am 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.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's accounts. 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 provider to reimburse the customer even though they authorised the payment.

Santander have raised R3(1)(c) of The Code which says:

"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".

So, I must first consider whether this should fairly be applied in this case. If I do not think this should be applied, in order for me to conclude whether the CRM Code applies in this case, I must consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An 'APP scam' is defined within the Code at DS1(2)(a) as:

"Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs 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 clear at DS2(2)(b) that it does not apply to *"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"*

If I conclude that the payment here meets the required definition of a scam then Mr H would be entitled to reimbursement, unless Santander has shown that any of the exceptions set out in R2(1) of the Code apply.

The LSB 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 Mr H'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 he was the victim of a scam rather than this being a failed or bad investment.

Are Santander entitled to rely on R3(1)(c) in this case, to delay making a decision under the CRM Code?

The CRM Code says firms should make a decision on whether to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to an investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at R3(1)(c) to wait for the outcome of that investigation before making a reimbursement decision. After the investigator issued his assessment of this case, Santander told our service it understands that technically as it made a decision that the Code did not apply as this was a private civil dispute, R3(1)(c) does not strictly apply in this case. It did ask us to consider applying it in the interests of fairness, so that Mr H was treated as other customers were where they had argued R3(1)(c) applied, rather than reaching an outcome on their complaints.

Where a firm already issued a reimbursement decision, for example by telling the consumer they would not be reimbursed because they did not meet the requirements expected of them under the Code, or because the CRM did not apply in their case as it amounted to a private civil dispute, then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that "a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code". The Financial Ombudsman Service does not have the power to restart R3(1)(c) - so where a firm has made a reimbursement decision, a consumer is entitled under the DISP rules to ask our service to decide the merits of the complaint about the payment they made fairly and reasonably and on the balance of probabilities.

So, this provision only applies before the firm has made its decision under the CRM Code. Santander had already reached a decision on Mr H's claim in its final response letter to him and in its correspondence with this service when it said that it amounted to a private civil dispute. Therefore it cannot seek to delay a decision it has already made, and cannot rely on R3(1)(c) here. And I do not think it serves the interests of fairness to delay making a decision on Mr H's complaint here.

I accept there is an ongoing police investigation into B, but its subject matter is unclear and it's also unclear when that investigation will finish or what the outcome will be. So, I do not think it would be reasonable to delay reaching an outcome to await the outcome of the police's investigation. I'm satisfied that this isn't necessary, as the available evidence gives a sufficiently clear picture of the facts and the overall nature of the enterprise that I can decide on the balance of probabilities whether this was a civil dispute or an APP scam.

Has Mr H been the victim of a scam, as defined in the CRM Code?

The Code does not apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it would not apply to a genuine investment that subsequently failed. And the CRM Code only applies if the definition of an APP scam is met, as set out above.

I do not consider the first part of the definition quoted above (DS(2)(a)(i)) is met in this case. This is not in dispute. But what is in dispute is whether Mr H's payments meet DS1(2)(a)(ii). So I have gone on to consider if his intended purpose for the payments was legitimate, whether the intended purposes he and B had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of D.

From what I have seen and what Mr H has told us, I am satisfied that he made the payments with the intention of investing in stocks and shares. I have not seen anything to suggest that he did not think this was a legitimate venture – and as Santander argues this is a civil matter, it too seems to accept this.

I've then considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so whether this was a scam or a genuine investment.

The evidence I hold suggest that B was operating as a genuine forex trading investment opportunity at one point – it invested nearly £5,000,000 of investors' funds with a legitimate forex trading platform authorised and regulated in another jurisdiction, and for a number of years investors received returns which were often substantial.

I also understand that the police investigation, at last update, was continuing to investigate B, but no charges have been brought that I am aware of, against those individuals responsible for B.

However, by the time Mr H made the payments to B, I am not satisfied that it was operating a legitimate enterprise. There is compelling evidence which establishes that investors were dishonestly deceived about the purpose of the payments they were sending to B. And so it follows that I am persuaded that Mr H's payments to B meet the definition of an APP scam under the CRM Code, rather than a mere civil dispute. I will explain why.

B was not authorised or regulated by the FCA. It would have needed to be regulated by the FCA to take part in the activity it was alleging to be engaged in. Private investment funds do not solicit investments from the general public or retail investors, which is what B were doing here. So I am persuaded that B misled investors over regulatory requirements for the activities it was said to be undertaking, and I have seen this in writing in its managed account agreements.

Reviewing the evidence our service has received, it appears that B received approximately £28,000,000 from individual or business investors. But, only £4,700,000 looks to have been used for the intended purpose of forex trading – less than 17% of the investment capital received. They made returns of roughly £4,100,000 – indicating that there was a trading loss of £600,000. Regardless of the fact that less than 17% of investment capital was traded, which resulted in a loss, roughly £19,000,000 was paid out to investors. This amounted to almost 68% of the investment capital received. The leftover funds were not traded – but instead appear to have been withdrawn to accounts linked to B or its associates.

B offered either loan agreements or managed account agreements – with returns of capital and 15-40% interest promised for the former, and a return of at least 48% for the latter. Mr H had a loan agreement with B. There is no available evidence to suggest that B could substantiate the rate of returns their investors were expecting. Nor is there evidence that B were trading forex or otherwise investing successfully and generating the profits they claimed to be generating.

So, I am of the opinion that B were not using investor funds for the purpose in which they were intended by Mr H, and this shows that it is more likely than not that they were not a 'legitimate supplier' of the investment services they claimed to be. I do think that the evidence suggests that their conduct went beyond misleading investors about a legitimate investment opportunity, and that the real purpose of the payments received was different to what Mr H and other investors were led to believe – and this was done through deception.

Whilst Mr H did not receive any returns, other investors did. But it appears that any returns that these other investors received were likely sent to encourage further investment. This further investment would either be from existing or new investors who were recommended the opportunity from others who had already invested – as Mr H's acquaintance had recommended B to him after he received returns. So, even if any of Mr H's money was used

to trade forex, or otherwise invest or trade, it was likely with the intention of encouraging more investment as part of an overall scam.

So, having considered everything, I am persuaded that B was more likely than not, operating a sophisticated APP scam. I am satisfied that Mr H's payments to B meet the definition contained within the CRM Code. And so it follows that Santander cannot fairly refuse to consider refunding Mr H under the provisions of the CRM Code on the basis that it amounted to a private civil dispute. So, I have gone on to consider whether Mr H should be reimbursed under the CRM Code.

Is Mr H entitled to a refund under the CRM Code?

Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mr H. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning. A second circumstance in which a bank might decline to reimburse, is if it can be demonstrated that the customer made the payments without having a reasonable basis for belief in a specific set of things.

Santander hasn't argued that it provided an effective warning in this case. It did provide a copy of the warning Mr H would have seen when he made the first payments which said:

"Could this be an investment scam?"

Any cold-calling with investment opportunities are likely to be criminals. If you are suspicious, please stop now.

If someone is pressuring you, please stop now.

Santander also said they spoke to Mr H on the second payment over the phone – but as it has not been able to provide a copy of this call, I have not been able to consider this.

For completeness, I have considered whether the written warning would amount to an 'effective warning'. Under the provisions of the CRM Code, as a minimum any 'effective warning' needs to be understandable, clear, timely, impactful and specific. It must also provide information that gives customers a better chance to protect themselves against being defrauded and should include appropriate actions for customers to take to protect themselves from APP scams. In short – the warning needs to be capable of countering the typical features of the generic scam type identified during the payment journey.

It is my opinion that this warning did not meet the definition of an effective warning. It lacked specificity to the scam Mr H was falling victim to – he was not cold called or pressured into this investment – it was recommended by a trusted acquaintance. It therefore would have lacked impact, as Mr H would understandably click past this due to the lack of specificity. It did not provide any information about how to protect himself from being defrauded, not did it bring to life the characteristics of the scam he was falling victim to. So, as this was not an effective warning, it follows that they cannot fairly decline reimbursement on the basis that Mr H ignored an effective warning.

I also do not think that it would be fair or reasonable for Santander to rely on the exemption to reimbursement that Mr H sent the funds without a reasonable basis for believing that he was sending funds to a legitimate investment. Given that Santander are still arguing that B was potentially a legitimate investment gone wrong, it would be hard to argue that Mr H did not have a reasonable basis for believing that B was a legitimate company. And I think that the manner in which Mr H was introduced by a trusted acquaintance who said he had received returns, the fact of meeting he director of B, testimony from existing investors,

historic performance presentation, and the sophistication of the communications from B – I think there was nothing that ought to have led Mr H to believe he was dealing with an illegitimate company.

With this in mind, I do not think that Santander have established that any of the exceptions to the presumption of a full refund under the CRM Code apply here. And so, it follows that Santander should reimburse Mr H in full under the provisions of the CRM Code.

Putting things right

In order to put things right, I direct Santander to:

- Refund Mr H the £50,000 lost to the scam; and
- Pay 8% simple interest per annum on this amount from the date his claim was declined under the CRM Code to the date of settlement.
- Assignment of rights

As B is going through insolvency proceedings, it is possible Mr H could recover some further funds in the future. In order to avoid the risk of double recovery, Santander is entitled to take, if it wishes, an assignment of rights to all future distributions under this process before paying the award.

My final decision

I uphold this complaint, and require Santander UK Plc to reimburse Mr H in line with what I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 January 2026.

Katherine Jones
Ombudsman