

The complaint

Mr W is unhappy that Santander UK Plc (“Santander”) won’t refund him after he fell victim to an investment scam.

What happened

In October 2020, Mr W came across an investment opportunity with an organisation - I will refer to K in this decision. On 12 October 2020 Mr W transferred £6,000 to K via a third party (I will refer to as N). N was a legitimate regulated entity at the time.

Following the payment Mr W received an interest payment of £94.57 in January 2021 but no further interest payments were received after that date.

Mr W discovered K went into liquidation and complained to Santander he’d been the victim of a scam.

Santander declined the claim, it felt Mr W invested with a legitimate company and this is a civil dispute.

Our investigator upheld the complaint. He found this was a scam. The investigator therefore recommended Santander refund Mr W in full.

Santander did not agree. It said:

- K was a genuine business, evidence by its entry on Companies House at the time the payment was made.
- Mr W’s investment was paid to N – a regulated company.
- At the time the payments were made there were FCA warnings of potential scams involving N, this was not loaded until August 2021.
- The beneficiary company, N, has entered liquidation. It does not feel that there is sufficient evidence to show that the funds were not invested in the agreed way by N, the actual beneficiary of the funds, and therefore the CRM Code would not apply.
- The FSCS will be considering claims for investors against N.

I issued my provisional decision on 16 May 2025 explaining why I was thinking of reaching the same outcome as the investigator but explained my reasoning in more detail.

Mr W has confirmed he had nothing further to add. Santander did not respond.

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 did not respond to my provisional decision.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.13, says, if a respondent (in this case Santander) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to my provisional decision has expired, I'm going to proceed with issuing my final decision. However, I think it's unlikely that Santander would've provided any new evidence or information that would've changed the outcome of the case.

As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

When considering what is fair and reasonable, I'm 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.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

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.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's (LSB) Contingent Reimbursement Model (CRM Code) for authorised push payment scams. The CRM Code was a voluntary code for reimbursement of authorised push payment scams which required firms to reimburse customers who have been the victims of APP scams - in all but a limited number of circumstances. Santander was a signatory to the CRM Code at the time the payment in question in this case was made.

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

The CRM Code says it doesn't 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 wouldn't apply to a genuine investment that subsequently failed.

And the CRM Code only applies if the definition of an APP scam, as set out in it is met.

An “APP scam” is defined in the Definitions and Scope section of the CRM Code:

“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.”*

Mr W wasn't deceived into transferring to a person other than he intended, so I need to decide whether he transferred funds to N for what he believed was a legitimate purpose but was in fact fraudulent.

From what I've seen and what Mr W has told us, I'm satisfied Mr W made the payment with the intention of providing an investment to K that would be passed on to other small to medium sized businesses in the UK property finance industry. This was by way of short-term bridging loans to companies involved in property development. Mr W understood he would receive regular returns and profit by the end of the investment term. And I haven't seen anything to suggest that Mr W didn't think this was legitimate.

I've 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 genuine investment.

The Insolvency Service has said it hasn't found any evidence of bridging loans being provided by K - which was exactly what K told investors it would be doing. This statement was made in May 2023, when The Insolvency Service said that its investigation was ongoing. Even after extensive investigations, the position hasn't changed.

It also had concerns over the trading of K and said it was acting as a Ponzi scheme. It hasn't found any evidence that K conducted any investments. A 'Ponzi' scheme is fraudulent in nature and such a description generally suggests there was never any intention to use the funds in the way promised.

The Insolvency Service and the insolvency practitioner involved in the liquidation process, have both confirmed the directors of K continue to fail to co-operate with the Insolvency Service's investigation into the company. The directors have also failed to attend court for a private examination. They have said this is frustrating the liquidation process. I accept that on its own this isn't evidence of an intention to defraud, but I've considered it alongside the other available evidence.

The fact that K was incorporated as a limited company is not, in my view, a persuasive reason to think it was operating legitimately. Setting up a limited company is a straightforward and inexpensive process. It's also worth pointing out that K's stated 'nature of business' on Companies House isn't providing bridging loans. According to Companies House, K's principal activities are listed as 'buying and selling of own real estate and other-letting and operating of own or leased real estate', which is different to how it purported to be using investors' money.

Other concerns are I understand that K's website closed and K then became uncontactable - which is unusual with a genuine organisation.

Whilst K may not have been subject to a criminal investigation, I am conscious that any criminal proceedings would require a higher standard of proof (beyond reasonable doubt) than I am required to apply (which - as explained above - is the balance of probabilities).

Overall, there is a lack of any evidence that K was operating as a genuine and legitimate company. Most consumers invested a large amount of money and received very small monthly returns for a short period before this stopped – typical of how a Ponzi scheme operates.

Ultimately, I've not been provided with any evidence to show that the business was operating in line with the way it described to, and agreed with, its investors prior to their investment. So based on the evidence I have, and on balance, I am satisfied this was a scam.

And so, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

Mr W made the payment to N – a regulated entity

I appreciate Mr W made the payment to N, rather than directly to K but given what is known of the relationship between N and K it's very likely the funds that credited N's account were passed to K within a few days (likely minus a small fee retained by N) and was carried out under a pre-existing agreement. More importantly, Mr W does not seem to have a customer relationship with N, the funds do not appear to credit an account in his name and he had no significant interactions with it. I'm satisfied N was acting on behalf of K and not Mr W and he had no reasonable way of preventing the onward transfer of funds to K.

It follows then that the money was both out of Mr W's control at the point it arrived at N and effectively under the control of K. That means that the payment Mr W made is capable of being covered by the provisions of the CRM Code.

I think it's fair to say, that the involvement of N was essentially incidental. So, while I'm somewhat sympathetic to Santander that it, rather than another financial business, will be solely responsible for Mr W's loss, given that Santander is a signatory to the CRM Code, I don't find that Santander being responsible creates an unfair outcome. Neither can I direct Mr W to pursue the matter solely with N which is, in any case, now in liquidation.

Other considerations

I am aware that the Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against N. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that N has conducted activities that have contributed to the same loss Mr W is now complaining to us about in connection with the activities of Santander.

As I have determined that this complaint should be upheld, Mr W should know that as he will be recovering compensation from Santander, he cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount he recovers from Santander he may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.)

Further, if Mr W has already made a claim at FSCS in connection with this matter and in the event the FSCS pays compensation, Mr W is required to repay any further compensation he receives from his complaint against Santander, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS shares information with other public bodies can be found in our privacy notice here: (<https://www.financial-ombudsman.org.uk/privacy-policy/consumer-privacy-notice>)”

Whilst the FSCS may be taking on these cases against N as a failed regulated business – it does not automatically follow that this was not a scam. This is not something that the FSCS would make a finding on before considering those claims.

I am also mindful that there is an ongoing administration investigation into K. I don't know how likely it is that any funds will be recovered as part of those proceedings. But if Santander has already paid a refund, it would not be fair or reasonable for those recovered funds to be returned to Mr W as well. 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 the administrative process before paying the award.

As Santander can ask Mr W to undertake to transfer to it any rights he may have to recovery elsewhere, I'm not persuaded that these are reasonable barriers to it reimbursing him in line with the CRM Code's provisions.

Is Mr W entitled to a refund under the CRM code?

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

Santander has not challenged our investigator's view that, should it be decided that Mr W fell victim to a scam, he should be reimbursed in full under the CRM Code. So it hasn't established that any of the exceptions to reimbursement apply.

But for completeness I'm satisfied no exception to reimbursement applies.

Santander hasn't submitted it provided a warning at the time Mr W made the transaction - although I note from it audit it's likely a warning was shown in response to Mr W's selected payment purpose 'transfer to an investment'. But it hasn't submitted the content of the warning - so I can't fairly say Mr W ignored an effective warning.

The fact that there continues to be debate about the legitimacy of the scheme years after the payment strongly suggests Mr W held a reasonable belief that the scheme was legitimate at the point he made the payment. And there's no other evidence I've seen which indicates it wasn't reasonable for him to hold this belief. He received a professional looking brochure which highlighted that capital was at risk – exactly like a genuine investment would. And K appeared to have been successfully running for a number of years. Payment was made via N – a legitimate and regulated entity at the time. I appreciate there was a warning about N but that didn't appear on the FCA website until August 2021.

It is only now with a significant amount of investigation that the events surrounding K have come to light. There was nothing in the public domain at the time about K that Mr W could've reasonably inferred from that a scam was taking place.

This means Santander can't rely on this exemption to reimbursement and should fully reimburse Mr W.

Putting things right

Mr W says he received one monthly interest payment back from K.

In order to put things right for Mr W, Santander UK Plc must:

- Refund Mr W the payments he made as a result of this scam (£6,000), less the payment he received (£94.57)
- Pay Mr W 8% interest on that refund, from the date it declined his claim until the date of settlement

As K is now under the control of administrators, it's possible Mr W may recover some further funds in the future. In order to avoid the risk of double recovery Santander UK Plc is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process (as well as any potential FSCS claim) before paying the award. If the bank elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr W for his consideration and agreement.

If Santander UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mr W how much it's taken off. It should also provide a tax deduction certificate if Mr W asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint, and I require Santander UK Plc to put things right for Mr W as 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 1 July 2025.

Kathryn Milne
Ombudsman