

The complaint

Ms P complains Santander UK Plc ('Santander'), hasn't reimbursed her following an Authorised Push Payment ('APP') investment scam she fell victim to. She says Santander should reimburse her for the money she lost.

Ms P has brought the complaint with the assistance of a professional representative. For ease of reading within this decision, I will refer to Ms P in the main.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Ms P was introduced to an investment company which I'll refer to as 'B'. Ms P's mother's friend and business partner had already invested in B, and this then led Ms P's mother and her partner becoming interested in investing also. Ms P's mother and her partner met the founders/directors of B and subsequently invested. Ms P believing everything to be genuine, and with her family members and their friends having already invested, decided to invest also.

Ms P's understanding was that she would enter into a loan agreement with B, on the basis that her funds would be used for general investment purposes (Foreign Exchange 'Forex' trading) and repaid in full after an agreed fixed term. She was guaranteed a rate of interest, which could be received as a monthly return, or full payment at the end of the fixed term. Ms P's initial agreement was to loan B £10,000 for a fixed term of 12 months with B repaying this principal amount to Ms P, with interest payable on the unpaid principal, at the rate of 40% per annum.

On 24 September 2020, Ms P made a £10,000 payment to B. And this was made to the details B had provided on the loan agreement, which was for an accountancy firm that B was using, which I'll call D.

Ms P believed the investment was going well and she kept any returns invested with B. In August 2021, Ms P renewed her agreement with B for another 12 months – at a rate of 30% per annum. Ms P was to the understanding that by 1 September 2022 she would be paid £17,266.60.

Ms P says she found out (through others) that in around January 2022, B weren't accepting new investments, and her parents received their final contact from B in May 2022. But by July 2022 they discovered B had collapsed and Ms P, and her family, were informed by Ms P's mother's friend that all the money was gone.

Ms P, through her professional representative, reported the matter to Santander in 2024 to try and recover her funds or be reimbursed her loss under the Lending Standards Board ('LSB') Contingent Reimbursement Model Code ('CRM Code'). This was a voluntary code that Santander was a signatory of. The CRM Code required firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances.

Santander issued its final response to Ms P on 3 September 2024. It considered that the payments Ms P had made to D (the accountancy firm) amounted to a civil dispute – and the CRM Code didn't apply to civil disputes.

Unhappy with the response, Ms P referred the matter to our service.

Upon our service informing Santander that Ms P had referred her complaint, Santander, aware of the broader circumstances of the complaint, advised that the payments Ms P made to D, were linked to B. It explained B was subject to an ongoing police investigation. And it considered there was insufficient information to determine whether B was operating a scam, and the outcome of the police investigation was needed before any review could be completed.

One of our Investigators looked into the matter and upheld Ms P's complaint. In short, they explained that they did not think it was fair for Santander to wait for the outcome of any police investigation to be concluded, before making a reimbursement decision under the CRM Code. Having reviewed the complaint, they felt it was more likely B was operating as a scam – and this was based on a number of factors. They therefore assessed the complaint under the CRM Code and did not think any exceptions to reimbursement applied.

They therefore recommended a full refund of the payment Ms P made (£10,000), as well as 8% simple interest from 15 days after Ms P's representative reported her fraud claim with Santander to the date of settlement.

Ms P accepted the findings, however Santander did not.

In short, Santander considered:

- that its primary position is that it is acting fairly in holding off from making a scam claim decision – which R3(1)(c) of the CRM Code permits a Firm to do where the outcome of a statutory investigation might reasonably inform the Firm's decision as to whether a case falls within scope of the CRM Code or not.
- here, there was an ongoing police investigation in respect of B, with no indication (as far as it was aware) of what the likely outcome of that investigation is going to be.
- the insolvency processes are yet to establish (as far as it is aware) the total value of assets for distribution, and there appears to be several routes for recoveries. The Investigator's view pointed out that there was some investment made and according to the administrator's report, some returns distributed.
- Ms P made a payment to D and not to B. So, the loss of funds in Ms P's case occurred later in the chain when determining whether Ms P's payment falls within the scope of the CRM Code.
- it is not clear whether payments were taken from customers as part of an APP scam and/or over what time period there was any scam activity as opposed to movement of funds for a legitimate investment, nor how other entities such as 'D' fit into the picture, and the ongoing investigations will shed light on that.

- it is unclear whether Ms P has any claim in the ongoing insolvency proceedings and if she did recover any funds through that process, after having received a refund from Santander then she stands to unfairly gain. And any potential compensation that an ombudsman awards, should be conditional on Ms P agreeing to the appropriate terms of an 'assignment of rights' with Santander.
- that Ms P didn't have a reasonable basis of belief when making the payments, as she was promised unrealistic returns and it provided an investment warning when Ms P made the payment.
- that overall, it is premature to make a decision at this stage, and if our service determines the case falls within the CRM Code then Ms P ought to take some responsibility for the loss she has incurred.

Our Investigator considered Santander's points – but wasn't minded to change their position. In short, they considered while Santander were seeking delay giving a scam outcome to Ms P relying on R3(1)(c) of the CRM Code, there was enough information to say B was operating a scam, without relying on the outcome of the police investigation and a scam outcome/decision could be reached on Ms P's complaint under the CRM Code. They also considered Ms P had a reasonable basis of belief when making the payments – given her direct family members recommendation and their experiences.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Santander was a signatory to the CRM Code. It required firms to reimburse victims of APP scams in all but a limited number of circumstances.

First, Santander has raised a concern that Ms P paid D and not B, and therefore the payment journey is not one that is covered by the CRM Code.

The CRM Code states:

“DS2(1) This Code applies to Customers undertaking Payment Journeys as defined in DS1(2)(k):

(a) between GBP-denominated UK-domiciled accounts, by any channel of push payment available to the Customer, such as in branch, on the phone, or online.

(b) to the point of the first reception of funds in an account held by a receiving Firm (the first generation account). Firms whose accounts are utilised in the onward transmission of APP scam funds are out of scope.”

Here the payment was a faster payment between GBP-denominated UK-domiciled accounts which satisfies (a). And the agreement Ms P entered into was with B. And within that agreement, B provided the bank account details of where it wanted the funds to be paid – which was D, an accountancy firm B was using. So, it was B's client account at D. And therefore, the account into which the funds were paid to was solely in the control of B and not D which satisfies (b). So, I'm satisfied the payment Ms P made is therefore within scope of the CRM Code.

The next and main point of dispute here is whether B was operating as a scam or not. Santander, had already provided a scam outcome to Ms P, but that was in relation to D – and not in regard to B.

Now it is known that the payment was in relation to B – and Ms P considers B were operating a scam, Santander are now relying on R3(1)(c) of the CRM Code to defer making a decision on this point. It considers there is an ongoing police investigation with no indication of what the likely outcome of that investigation is going to be. And the outcome of that investigation will reasonably inform it whether B was operating a scam or not – and therefore whether Ms P's claim falls within the scope of the CRM Code.

R3(1)(c) 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 have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the police investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations. 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.

In order to determine Ms P'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 Ms P 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 Ms P first raised her claim with Santander in 2024, 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 Ms P 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 ongoing processes might result in some recoveries for B'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 Ms P under those processes in respect of this investment before paying anything I might award to her on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the ongoing police investigation for me to fairly reach a decision on whether Santander should reimburse Ms P under the provisions of the CRM Code.

In order to reach a decision, I've considered the definition of an APP scam under the CRM Code. Under DS1(2) an APP scam is defined as:

"...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."

DS2(2)(b) explains that the CRM Code 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"

Of particular relevance here is whether Ms P transferred funds to B for what she believed to be legitimate purposes, but which were, in fact, fraudulent.

It's evident that B had some features that gave it the impression of operating legitimately. There are those individuals associated with B who held in-person meetings and online events to promote the investment. And many people who lost money had been introduced to the scheme through personal recommendations (sometimes by people who'd successfully withdrawn significant 'profits' from the scheme).

However, I've found the following facts to be persuasive evidence that B was operating as a scam:

- B received around £28,000,000 in investment funds – however, of these funds, only around £4,700,000 appears to have been invested (so less than 17% of funds received) – and of this money invested, B made a loss of around £600,000.
- Despite this low proportion of investment, B still paid out around £19,000,000 to investors (so around 68% of capital received). Therefore, it seems a large proportion of 'returns' investors were seeing weren't in fact investment returns – but funds provided to B by other investors.
- It therefore seems that B was providing funds to investors to provide the impression that it was performing as expected, the likely intention of which was to obtain further investment into what was an overall scam.
- This is supported by the fact that B was also never regulated by the FCA, which it needed to be to undertake the activity it was alleging to be engaged in.

- Additionally, while not all payments were made directly to B, we've seen evidence that notable proportions of payments made to other firms were passed on both to B and other firms under the same director, with little to no evidence of genuine trading activity.

Taking into account all of the above, I'm satisfied, on the balance of probabilities, that the money that was intended for and sent to B was not used for its intended purpose. The evidence suggests that Ms P wasn't involved in a failed investment but a scam.

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. There is no certainty that any prosecutions will result from the police investigations nor what, if any, new light they would shed on the evidence and issues I've discussed.

So, as I'm satisfied Ms P has most likely been the victim of an APP scam, I've considered whether she should be reimbursed or not under the CRM Code.

Is Ms P entitled to reimbursement under the CRM Code?

I've considered whether Santander should reimburse Ms P under the provisions of the CRM Code. There are generally two exceptions to reimbursement:

- Ms P made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or B was legitimate.
- Ms P ignored what the CRM Code deems to be an 'Effective Warning'

And importantly, when assessing whether it can establish these things, Santander must consider whether they would have had a 'material effect on preventing the APP scam'.

I have considered whether Ms P had a reasonable basis to believe B was legitimate and was providing a genuine investment product.

In doing so, I have considered how Ms P was introduced to B. I consider this to be a key factor in considering whether Ms P held a reasonable basis of belief when making a payment to B.

Ms P was introduced to B by her parents, who had already been investing with B and who had also met the founders/directors of B. So, I can understand after seeing and hearing first-hand about B by her family, coupled with them having already invested (and significantly) and with things seemingly running as planned, why it would have seemed a genuine investment company to Ms P.

When I consider how Ms P was introduced to B and that her parents had liaised with the founders personally and had invested significantly as a result, and think about the sophistication of this scam, I can further understand why Ms P felt the investment was a genuine one at the time.

I accept some of the claims made by B about the returns it could generate seem unlikely. But, and importantly, alongside this I also have to weigh up what Ms P had been told about B by others, and what she had seen others seemingly get back in returns and how their investments were doing. I think the sophisticated aspects of the scam and the personal family recommendations, outweighs the concerns that Ms P perhaps ought to have had about the returns being claimed.

When making the payment towards her investment, Ms P paid an accountancy firm, rather than B. She's said this didn't ring alarm bells and was the correct confirmed details as per the loan agreement. I don't think it was unreasonable for Ms P to not be concerned or think anything untoward about this, especially considering the nature of the business she was paying, that being an accountancy firm, rather than an entirely irrelevant firm.

I've also taken into account that even now, with the benefit of hindsight and evidence surrounding B, there is still a dispute regarding whether B was a scam or not. So, I think it would be unfair to suggest that Ms P ought fairly and reasonably to have realised this at the time.

On balance, I think there was enough to reasonably convince Ms P at the time that this was a genuine investment company. With this in mind, I don't think Ms P made the payments without a reasonable basis of belief that B and the investment itself was genuine.

I have also considered whether Santander can rely on the exception to reimbursement that Ms P ignored what the CRM Code deems to be an 'Effective Warning'. Santander says Ms P was provided with an investment warning when she made the payment.

Having reviewed the warning Ms P was provided, I don't think it meets the definition of an effective warning as set out within the CRM Code. The warning states:

"Could this be an investment scam?"

If you've been cold-called or contacted out of the blue about an investment opportunity, this is highly likely to be a scam

Please check the company details thoroughly, including on the Financial Conduct Authorities website (fca.org.uk), before transferring any money"

I don't consider this warning goes into enough detail to be considered an effective warning. The CRM Code sets out that effective warnings "*should enable the Customer to understand what actions they need to take to address the risk...*" and need to be impactful "*...to positively affect Customer decision-making in a manner whereby the likelihood of an APP scam succeeding is reduced. This should include steps to ensure that the Customer can reasonably understand the consequences of continuing with an irrevocable payment.*"

Here the warning highlights being cold called – or contacted out of the blue, but it doesn't talk about any of the other common features or warning signs that may indicate an investment scam, such as being wary of high returns being promised. It also isn't specific about what consumers should check on the FCA website – such as the significance of it being a regulated firm or to check the FCA warning list which details known scam companies that have already been reported. The warning also doesn't provide the consequences of a consumer not doing so and continuing with an irrevocable payment.

I am also mindful, Ms P hadn't been cold-called or contacted out of the blue, the recommendation for the investment came from her immediate family members who had already invested with B. And Ms P's parents had met the directors of B in person – so Ms P would have been satisfied by this and that all was ok as the company details had been checked. I don't think it unreasonable that Ms P would have proceeded past this warning.

I am also mindful the CRM Code explains that a firm, in assessing whether an exception to reimbursement applies such as ignoring an effective warning, has to take into account whether it would have had a 'material effect on preventing the APP scam'.

Here Ms P had no reason to believe that B wasn't a genuine investment company at the time. So, I think it is fair to say it wouldn't have had a material effect on preventing the scam such was her belief in her parents who had already invested, and that B was therefore a legitimate investment company. So, I do not think an exception to reimbursement can be applied for this reason in any event.

Summary

Overall, I do not consider it necessary to await the outcome of the ongoing police investigations into B and any subsequent proceedings that may happen as a result. I am satisfied, based on the evidence available, that Ms P was more likely than not the victim of an APP scam. And her fraud claim is therefore covered by the provisions of the CRM Code. I'm also satisfied no exceptions to reimbursement under the CRM Code apply. So, it follows that I'm satisfied Santander should reimburse Ms P under the provisions of the CRM Code. And Santander is entitled to take, if it so wishes, an assignment of the rights to all future distributions to Ms P under any relevant processes whereby potential compensation or recovered funds may be returned to victims.

With regard to additional compensatory interest, I consider that it ought to be applied from 15 days after Ms P's representative reported her fraud claim with Santander to the date of settlement. I'm satisfied there was enough information available to Santander at that time to it to have allowed it to carry out an assessment and/or verify any information it needed to and provide its outcome.

Putting things right

I uphold this complaint. Santander UK Plc should pay Ms P:

- £10,000 she lost to the scam orchestrated by B; and
- 8% simple interest on that amount from 15 days after Ms P's representative reported her fraud claim with Santander to the date of settlement.

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 12 September 2025.

Matthew Horner
Ombudsman