

The complaint

Miss R is unhappy that Santander UK Plc (“Santander”) won’t refund the money she lost to an investment opportunity she now believes was a scam.

Miss R brings her complaint with the assistance of a professional representative. For simplicity, I will refer to Miss R throughout this decision, even when referencing what her representative has said on her behalf.

What happened

The background to this complaint is well known to all parties and so I won’t set them out again here in full. But briefly, Miss R on 28 August 2020 made a payment of £6,000 (which shows on her statement as debiting her account on 3 September 2020). She made the payment to a company I will refer to as ‘M’, for what she believed was a genuine investment opportunity. The payment was made via N – a genuine company trading on behalf of M.

Miss R received twelve returns between October 2020 and September 2021 totalling £218.86, and she said the investment was due to mature in one year. Later Miss R received communications from another company – I’ll refer to as ‘Z’ who claimed to have taken over M. And in January 2024, Z told investors M was closing and investors wouldn’t get their money back.

It was then that Miss R felt she’d been the victim of a scam. Miss R raised a complaint with Santander in August 2024 – seeking reimbursement for the money she’d lost.

Santander said the payment wasn’t covered under the Lending Standard Board’s Contingent Reimbursement Model Code (‘CRM Code’). It said the issue is a dispute with a legitimate investment supplier that did not mature as expected. It added the CRM Code doesn’t 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. Santander said N was regulated by the Financial Conduct Authority (‘FCA’), and N and M were both registered on Companies House (‘CH’). It considers Miss R decided to accept a higher level of risk when she made the investment based on her own limited research of M and the investment she was making.

Our Investigator upheld the complaint in part. She felt Miss R had been the victim of a scam. She considered the Contingent Reimbursement Model Code (‘CRM Code’) – but she didn’t think Miss R had a reasonable basis for believing this was a genuine situation. However, she thought the payment Miss R made presented an Authorised Push Payment (‘APP’) risk and so, she was persuaded Santander ought to have provided a warning. Having considered the warning Santander says Miss R would’ve been given at the time of making the payment - she didn’t think it met the requirements of an effective warning under the CRM Code. It followed that she thought Santander ought to reimburse Miss R 50% of her loss, minus any returns received, along with 8% simple compensatory interest.

Our investigator also considered whether Miss R was vulnerable under the CRM Code based on what she’d been told. Whilst she recognised what had been shared with her, she

didn't think Miss R was vulnerable to the scam she fell victim to – she thought her actions demonstrated that Miss R was capable of finding the investment, considering it and investing. So, she didn't think Santander ought to refund her loss under the vulnerability clause of the CRM Code.

Santander didn't agree and provided detailed submissions in response. In summary, (but not limited to) it said:

- N, whom Miss R paid was regulated by the FCA. It says this means that the Financial Services Compensation Scheme ('FSCS') will be considering claims for investors. It thinks Miss R should be referred to the administrators. It doesn't consider it correct to review the payment under the CRM Code due to this.
- It reiterated its stance that this is not a scam but the result of an investment not coming to fruition.
- Miss R received payments from the investment between October 2020 and September 2021 – which Santander says supports this is a failed investment.
- That credits were received from the investment until N entered liquidation in 2021. While it has read our Investigator's comments about M, it does not agree that this information impacts the outcome of this case. It's told us there is no evidence to show that Miss R would not have continued to receive credits from the investment had the beneficiary of the funds (N) not gone into liquidation.
- It maintains Miss R didn't carry out any due diligence before carrying out the investment.

Having considered Santander's further points our Investigator's outcome remained unchanged. She didn't disagree that N was regulated by the FCA, but explained that our service had seen statements from the receiving account that shows investors funds were being passed on to M. She reiterated her reasons for why she was satisfied the payment could be considered under the CRM Code – that she was persuaded Miss R had fallen victim to an APP scam, but that she didn't think Miss R had a reasonable basis for belief when making the payment which is why she'd not recommended she be fully reimbursed her loss.

Santander maintains that as the FSCS will be considering claims for investors, Miss R should be referred to the administrators. It reiterated that it does not consider this to be a scam.

As the case has not been resolved informally, it has been passed to me for a 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, 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 time.

Where the evidence is incomplete, inconclusive or contradictory, I must reach 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 and the wider 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 CRM Code for APP scams. The CRM Code was a voluntary code for reimbursement of APP 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 Miss R 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."*

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

From what I've seen and been told, Miss R believed the purpose was that of an investment providing a fixed rate of return to a green energy investment company which would, in turn, provide small and medium sized renewable energy developers with short term funding.

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.

Looking at M's records on Companies House – it hasn't posted accounts since 2021 and doesn't appear to have been audited. The nature of the business was listed as development of building projects and, whilst the listing had also included activities auxiliary to financial intermediation by the time Miss R made her investment, this doesn't appear to be in line with the investment purposes consumers were led to believe they were investing in.

The FCA provided a warning in October 2021 about M providing financial services when it was not authorised to do so. Miss R invested before this date.

Z (an organisation that took over M in 2022) told investors the FCA warning was due to clone companies impersonating M - which doesn't appear to be true. And there's no current evidence to suggest a clone company was in operation as Z claimed.

It's also important for me to state that, to date, 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, on balance, I believe this was a scam.

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

Santander within its submissions to us has made reference to N – that it contests the company (N) that received the funds was being run fraudulently, that Miss R continued to receive credits from the investment up until N entered liquidation in 2021. Santander added that whilst it's read what our Investigator has said about M, it doesn't agree this impacts the outcome of this case. It says there is no evidence to show that Miss R would not have continued to receive credits from the investment had the beneficiary of the funds – N, not gone into liquidation.

I've thought about what Santander has said about N and I appreciate Miss R made the payment to N, rather than directly to M. Given what is known of the relationship between N and M and what I've seen – Miss R's funds credited N's account and were then passed onto M (likely minus a small fee retained by N) and was carried out under a pre-existing agreement. More importantly, Miss R does not seem to have a customer relationship with N, the funds do not appear to credit an account in her name, and she had no significant interactions with it. I'm satisfied N was acting on behalf of M and not Miss R and she had no reasonable way of preventing the onward transfer of funds to M.

It follows then that the money was both out of Miss R's control at the point it arrived at N and effectively under the control of M. That means that the payment Miss R 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 Miss R's loss, given that Santander was a signatory to the CRM Code, I don't find that Santander being responsible creates an unfair outcome. Neither can I direct Miss R to pursue the matter solely with N which is, in any case, now in liquidation.

Financial Services Compensation Scheme ('FSCS')

I note Santander has raised that N (whom Miss R paid) was regulated by the FCA. It says this means that the FSCS will be considering claims for investors. Because of this, Santander maintains that Miss R should be referred to the administrators and that it doesn't consider it correct to review the payment she made under the CRM Code due to this.

I'm aware the 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 Miss R is now complaining to us about in connection with the activities of Santander.

As I have determined that this complaint should be upheld in part, Miss R should know that as she will be recovering compensation from Santander, she cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the

amount she recovers from Santander she 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 Miss R has already made a claim at FSCS in connection with this matter and in the event the FSCS pays compensation, Miss R is required to repay any further compensation she receives from her 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.

As Santander can ask Miss R to undertake to transfer to it any rights she may have to recovery elsewhere, I’m not persuaded that these are reasonable barriers to it reimbursing her in line with the CRM Code’s provisions.

Reimbursement under the CRM Code

The CRM Code requires a firm to reimburse victims of APP scams that fall under its provisions, unless a firm can demonstrate that one of the exceptions to reimbursement apply.

I’ve therefore considered whether these exceptions apply and have firstly focused on whether Miss R lacked a reasonable basis for believing that she was dealing with a legitimate investment company providing a legitimate investment.

I’ve thought about what Miss R has told us happened. Based on everything I’ve seen and been told; I’m not satisfied Miss R did have a reasonable basis for belief. I think there were a number of concerning factors here that ought to have made Miss R cautious and led her to complete more research before making the payment she did. I will now explain why.

I’m mindful Miss R, when raising the complaint with Santander said the initial contact with M was made either by phone or through the internet. Our Investigator was also told in response to an information request that Miss R recalls receiving a phone call, where she may have enquired about the investment she’d seen advertised. Whilst its not fully clear – based on what I’ve seen and been told, on balance, it seems Miss R was looking for an investment to enhance her financial standing and came across M. She expressed interest and then received contact by phone from someone at M, which resulted in Miss R investing. I’ve not seen anything that suggests Miss R was aware of M prior to her enquiry after looking for investment opportunities. Miss R said the person from M on the call was very convincing. As such, it appears that Miss R took what M had told her at face value.

Miss R received a certificate after making the payment - notifying her of the investment but I’ve not seen anything that suggests Miss R received any other documentation, such as, an investment brochure or literature. I think given Miss R was looking to invest £6,000 – she ought fairly to have expected to receive some formal documentation prior to making the payment – such as, a contract, documentation that outlined how the investment worked.

It's been indicated that Miss R carried out some checks – looked at M's website, however, I haven't seen anything that shows Miss R carried out any other checks into what she was being told about the investment opportunity – such as the promised returns – to satisfy herself about the investment prior to making the payment. As I've said above, it appears that Miss R took what she was told at face value but given the amount of money she was investing, I think Miss R ought reasonably to have carried out more research to satisfy herself about M and the investment she was looking to make.

I can also see our Investigator asked Miss R why she sent the payment to N and not M. Miss R has said she was advised to send the funds to N and acted on this as she thought it was a necessary request. It's not clear to me based on what I've been told why Miss R thought this was necessary but, in any event, I think it fair and reasonable to have expected Miss R to have asked some more questions about what she was being asked to do. I think this ought to reasonably have prompted Miss R to have satisfied herself about whom she was sending the payment to – to understand N's connection to M and all-round better satisfy herself as to the beneficiary of her funds and why the payment was not being made directly to M.

I accept that there were some aspects that would have added an air of legitimacy to the investment opportunity – Miss R wasn't cold called but appears to have received contact following enquiries she made. But when taking all the above into account, I'm persuaded there was enough going on here that ought fairly and reasonably to have led Miss R to have acted more cautiously than she did and should have prompted her to do more to satisfy herself about the investment and payment she was making.

My intention is not to further Miss R's distress where she's already been the victim of a cruel fraud. But merely to highlight that I do find Santander has been able to demonstrate it can reasonably rely on an exception to reimbursement.

Did Santander meet the standards expected of a firm under the CRM Code?

The CRM code says that, where a firm identifies APP scam risks, it should provide "Effective Warnings" to their customers. It sets out that an Effective Warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an Effective Warning should be understandable, clear, impactful, timely and specific.

I'm satisfied given the value of the payment - £6,000, that Santander ought to have identified Miss R could be at risk of an APP scam and provided effective warnings in line with the firms' standards under the CRM code.

Santander has provided the online warning it says Miss R would've seen at the time of making the payment. It says, *"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. If you're at all nervous, please cancel this payment and call us immediately."*

I recognise in providing the message above that Santander took steps to provide Miss R with an effective scam warning at the time she was asking to make the payment. However, I don't think the warning met the minimum requirements of an Effective Warning under the CRM Code. I'll now explain why.

Miss R has shared that she was looking for an investment opportunity and came across M. Following this, she received a call from someone at M and as such, Miss R wasn't cold

called. As such, I don't think Santander's warning would have resonated with Miss R as I'm not persuaded, she would have thought the contact was out of the blue – instead, I think Miss R would have considered the contact a follow up to her enquiry about the investment opportunity.

Whilst, I note the warning tells Miss R to check the company details, including on the FCA website, this isn't specific and doesn't provide details as to what Miss R should be checking and looking out for. The warning also doesn't set out the consequences of proceeding with the payment. Overall, I consider that Miss R might reasonably have concluded the warning simply wasn't relevant to her in the circumstances of this case.

All things considered, I don't think the warning Santander provided was sufficiently specific or impactful to break the spell of the type of scam Miss R was falling victim to. It follows that I'm not satisfied Santander has established Miss R ignored an effective warning.

Vulnerability under the CRM Code

Miss R has referenced the CRM Code's provision for vulnerable consumers. The CRM Code says that there are provisions under the Code which might lead to a refund, even when a customer doesn't have a reasonable basis for belief. The relevant part of the Code says:

'A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered.'

So, I've carefully considered whether there were vulnerabilities present at the time to such an extent that Miss R was unable to take steps to identify the scam she fell victim to or to recognise steps she might take to test the legitimacy of what she was being told by the fraudster. To do so I must consider the details of the scam, Miss R's actions throughout, and the wider circumstances of what was happening.

Miss R has shared information about her health conditions and has said that these have a considerable impact on her overall well-being and cognitive function, which she feels made her more susceptible to stress and manipulation. Miss R has also explained that the stress and anxiety resulting from the scam have exasperated these physical health issues.

I'm sorry to hear of all Miss R has been through and I don't doubt that her health has potentially been impacted further as a result of what's happened. On balance, based on everything I've seen and been told, I'm afraid I don't think it is unreasonable to expect that Miss R could have protected herself from the scam.

There is evidence within the circumstances that suggest Miss R was capable of taking steps to protect herself from fraud and financial harm. While Miss R has told us her previous investment experience was in ISAs and savings with her bank, I'm mindful that Miss R was able to look for investment opportunities, consider the investment and, proceeded to invest. Further, the submissions when raising the complaint with Santander indicates that Miss R carried out some checks – looking at M's website and so, I'm persuaded Miss R was capable of doing more.

It follows, on balance, that I don't think it would have been unreasonable to have expected Miss R's research to have extended further than it did and, importantly, I've not seen persuasive evidence that suggests Miss R didn't have the capacity and understanding to query the legitimacy of what was being offered or find out more about whom she was being asked to send her funds to.

Recovery of funds

I've also thought about whether Santander could have done more to attempt to recover the payment after Miss R reported the fraud. But for completeness, even if there was a delay, I don't think it likely would have made a difference here.

The payment was made in 2020, and the scam wasn't reported until 2024. I understand that Miss R didn't know she was the victim of a scam before this, but the delay means any recovery action was most unlikely to be successful - as fraudsters usually remove funds as soon as possible.

Compensation

For completeness, I note in addition to seeking reimbursement for the money she'd lost Miss R has also requested £300 compensation. While I have made a redress recommendation in this case, I don't find that any additional compensation ought to be awarded. I say this because, I consider there will be some degree of inconvenience that naturally arises as the result of making a complaint and, I'm persuaded the distress and inconvenience Miss R has suffered is largely as a result of the fraudsters' actions.

To conclude, for all the reasons I've explained above, while I consider Santander has established an exception to reimbursement under the CRM Code – that Miss R didn't have a reasonable basis for belief when making the payments, I find Santander failed to meet the standards required of it under the CRM Code. Therefore, Santander is liable for 50% of the loss here.

Putting things right

For the reasons explained above, Santander UK Plc should now:

- Refund 50% of the outstanding loss, which I calculate to be £2,890.57.
- To add 8% simple interest to the above refund from the date the claim was declined to the date of the settlement.

If Santander is legally required to deduct tax from the interest it should send Miss R a tax deduction certificate so that she can claim it back from HMRC if appropriate.

As it's possible Miss R may 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 the rights to all future distributions under another process in respect of this £6,000 investment 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 Miss R for her consideration and agreement.

My final decision

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 13 January 2026.

Staci Rowland

Ombudsman