

The complaint

Mr and Mrs M are unhappy that Santander UK Plc won't reimburse them after they fell victim to a scam.

What happened

Mrs M was introduced to an investment opportunity with a company I will call 'S' by her father. He had done his own research into S and had received returns of over £18,000 on his investment. Mrs M also spoke with representatives of S and checked that S was a legitimate business on Companies House. Mrs M says she was also aware of other people who had made profits on their investments and been able to withdraw those profits.

Mrs M agreed to invest once she had seen her father's successful withdrawal and, after signing a contract, which was then countersigned by the individual who had started S – Mr B – Mrs M made a payment of £10,375 to S for her investment in April 2022. This payment was made from her joint account held with Mr M.

Initially, Mrs M received statements showing that she was making profits on her investment. But Mrs M then became aware that the police were investigating S, and when she was unable to withdraw any of her funds from S she realised she had been the victim of a scam.

On being advised of the circumstances in August 2022, Santander looked into things but was waiting for the outcome of the police investigation before making any finding on Mr and Mrs M's claim. Mr and Mrs M were unhappy with this, and with the lack of updates they felt they had received about what was happening with their claim, so they referred a complaint to our service.

In its submissions to us Santander reiterated that it did not feel it could fully assess Mr and Mrs M's claim until the outcome of the police investigation was known. But it nonetheless confirmed that it felt Mr and Mrs M had not done reasonable checks to ensure that S was legitimate before making the payment, and that it had given them a warning about investment scams at the time.

One of our Investigators looked into Mr and Mrs M's concerns. They were satisfied Mr and Mrs M had been the victim of a scam and that, as per the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code), they were entitled to a refund of their loss. This is because they considered Mr and Mrs M had a reasonable basis for believing the investment was legitimate. They also recommended that Santander pay £100 compensation for the poor service provided during the claim process, they felt that Santander could have been more proactive in keeping Mr and Mrs M updated.

Santander disagreed with the Investigator's view. It maintained that the outcome of the police investigation was likely to affect its decision regarding reimbursement, and so felt it was reasonable to pause this case until that outcome was known – citing section R3(1)c of the CRM Code. Santander also maintained that Mr and Mrs M had been given an appropriate warning regarding the payment they made, but had not carried out appropriate

checks on S following that warning. Lastly, Santander did not agree that any compensation was warranted, it said there had been no updates to send to Mr and Mrs M.

As no agreement could be reached, the complaint has been passed to me to consider and come to 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 doing so, 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 be good industry practice at the time.

In broad terms, the starting position at 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 a payment because 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.

The CRM code is of particular significance here. It requires its signatories to reimburse customers who are victims of scams like this one, unless some limited exceptions apply, and Santander is a signatory of the Code.

Santander has referred to R3(1)(c) of the CRM Code as a justification for pausing investigation into the case. That section of the Code 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."

Is it appropriate to determine this complaint now?

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, as is the insolvency process.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. 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. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which is the balance of probabilities).

As for investigations by liquidators/administrators, these are normally made for the purpose of maximizing recoveries for creditors. Sometimes they lead to civil proceedings against alleged wrongdoers, or against allegedly implicated third parties. But the claims may not be relevant to the issues on the complaint. And, even if they are potentially relevant, such

claims are quite often compromised without a trial and on confidential terms, so the outcome is of little benefit to our service.

In order to determine Mr and Mrs M'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 they were 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 Mr and Mrs M first raised their concerns with Santander in August 2022 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 Mr and Mrs M 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 processes might result in some recoveries for S'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 Mr and Mrs M under those processes in respect of this investment before paying anything I might award to them on this complaint. I appreciate that process may not be straightforward, but that does not mean it is an unreasonable suggestion in these circumstances.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of any investigations by the police (or the liquidator) for me to fairly reach a decision on whether Santander should reimburse Mr and Mrs M under the provisions of the CRM Code.

Were Mr and Mrs M the victim of a scam?

The relevant definition of a scam in accordance with the CRM Code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM Code also 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 doesn't cover a genuine investment or a genuine business that subsequently failed.

So, in order to determine whether Mr and Mrs M have been the victim of a scam as defined in the CRM Code I need to consider whether the purpose they intended for the payment was legitimate, whether the purposes they and S intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of S.

From what I've seen and what Mr and Mrs M have told us, I'm satisfied they made the payment with the intention of investing in forex trading. They thought the funds would be used by S to trade and that they would receive returns on their investment. But I think the evidence I've seen suggests S didn't intend to act in line with the purpose for the payments it had agreed with Mr and Mrs M.

In this case S instructed Mr and Mrs M to make a payment to an account linked to S. Although I can't share the details for data protection reasons, the statements for the beneficiary account do not suggest that legitimate investment activity was being carried out at the time Mr and Mrs M made the relevant transaction. Whilst there is evidence S and its linked companies initially did carry out trades, it doesn't necessarily follow that it was a legitimate enterprise. S and its linked companies were not authorised by the FCA to carry

out trading, so its operations clearly lacked an important element of legitimacy; it was required to be authorised to do the activity it was carrying out and it wasn't. It went so far as to lie to some potential investors about it being in the process of getting FCA authorisation whilst it was 'trading' – the FCA doesn't allow businesses to carry on regulated activities without being authorised, so S wasn't being honest with potential investors.

Further concerns centre around the owner of S, Mr B (who was bankrupt at the time). From the paperwork provided to consumers, he appears to have "personally guaranteed" the investments (despite forex being a high-risk investment and him never being in a financial position to do so). He also signed contracts on behalf of S despite not officially being listed as the director of the business. He appears to have acted as a 'shadow director', when he would've been disqualified as a director in his own right due to his bankruptcy. Furthermore, S was listed as an 'IT consultancy' business on Companies' House and not a financial services firm.

So based on the above, along with the weight of testimony we have seen from other consumers who invested in S, I am satisfied that it is more likely S was not acting legitimately, since its intentions did not align with Mr and Mrs M's intentions, and I am satisfied that S was dishonest in this regard. It follows that I'm satisfied Mr and Mrs M were the victim of a scam.

So, for the reasons explained above, I don't think it is necessary to wait for the outcome of the police investigation or any potential court case for me to reach a fair and reasonable decision regarding this complaint.

Are Mr and Mrs M entitled to reimbursement under the Code?

Having established that the payment is covered by the CRM Code, I've gone on to consider whether any of the relevant exceptions to reimbursement were applicable. The Code allows a firm to not reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made; or
- The customer made the payment without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate.

Santander says that one or more of the relevant exceptions are applicable in this case.

I'm satisfied that the first exception listed above isn't applicable here. I understand Mr and Mrs M did see a warning when making the payment, and I acknowledge that this warning did set out many of the details relevant to an investment scam, and asked Mr and Mrs M to take steps to make checks on S before they went ahead with the payment. But this would only be relevant if I considered that any checks they could have done would have been likely to expose this scam, and I don't consider it is likely this would have been the case.

I say this because, based on what they knew at the time, I don't think anything Mr and Mrs M would have been able to find out at the time of the payment would have identified that S was a scam. There were some aspects of how S was operating that might have given them some cause for concern. But given that they had seen Mrs M's father was able to withdraw a significant amount of profit from the scheme they believed they were investing in, that they could see S was properly registered on Companies House, that they were aware of other successful investors, and that Mrs M had spoken directly with various employees of S, I don't think this would have affected their belief that S was legitimate.

So, I don't think I can fairly say that Mr and Mrs M failed to take appropriate action in response to the warning that they were given, or that this warning would have affected their reasonable basis for belief that the investment with S was legitimate.

And, as intimated above, I'm also satisfied that Mr and Mrs M made this payment with a reasonable basis for believing that the business with which they transacted was legitimate. They'd relied on a recommendation from a close family member, and had seen the significant returns he had received on his investment. Mr and Mrs M were also aware of others who had invested in the scheme, and had spoken at length with employees of S. And given the paperwork Mrs M received regarding her investment, they had no real reason to question whether S was legitimate. I'm not persuaded that there were any clear and unambiguous red flags that ought to have put Mr and Mrs M on notice that they might be about to fall victim to a scam.

I appreciate that the returns they were expecting to receive were very high, but given that they had seen others receive significant returns, I don't think I can reasonably say this would have been as concerning to them as it would be to Santander. S also had the appearance of being a legitimate business, with employees, regular updates and signed contracts relating to the investment.

Santander has said that Mr and Mrs M did not do enough checks of their own on whether S was legitimate. But at the time of their investment there were no clear warnings readily available that would have told them this was most likely a scam. And I think what they had seen from Mrs M's father and from their own dealings with S would have been compelling. As a result, I'm satisfied Mr and Mrs M did have a reasonable basis for believing the investment was legitimate, and so consider that Santander should reimburse them under the Code.

So, in summary, I don't consider that Santander can reasonably rely on the exceptions it has detailed. It follows that I consider Santander should refund the payment made as part of this scam as per the CRM Code.

Turning to the service Mr and Mrs M received regarding their claim, I appreciate what Santander has said about there being nothing much to tell Mr and Mrs M while they were awaiting the outcome of the police investigation, but it appears that there were significant periods of time with no contact from Santander at all. And this was, after all, an open scam claim, so I don't think it was unreasonable for Mr and Mrs M to expect periodic updates, even if those updates just reiterated that Santander had nothing new to say. Given the stress that a scam claim will inherently cause, I do think Santander could have done more here, and so I'm satisfied that the £100 compensation recommended by our Investigator is reasonable in the circumstances of this complaint.

Putting things right

To resolve this complaint Santander should:

- Refund the payment made as a result of this scam; and
- Pay 8% interest on that amount from the date the claim was declined to the date of settlement.
- Pay £100 compensation

My final decision

I uphold this complaint. Santander UK Plc should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 23 October 2025.

Sophie Mitchell
Ombudsman