DRN-5625407

The complaint

Ms K is unhappy that Santander UK Plc ("Santander") won't refund the money she lost to an investment opportunity she now believes was a scam.

What happened

The background to this complaint is well known to both parties and was set out in the investigator's view of 28 August 2024. But briefly, in November 2020, Ms K came across an investment opportunity via a friend - with a company I will refer to as M. The payment of £10,000 was made via N – a genuine company trading on behalf of M. Ms K received eight returns. Later she received communications from another company (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.

Santander said the payment wasn't covered under the Lending Standard Board's Contingent Reimbursement Model (CRM) Code. It explained that N was a legitimate and genuine business that has gone into liquidation.

Our investigator upheld the complaint in part. He felt Ms K had been the victim of a scam. He considered the Contingent Reimbursement Model (CRM) Code - he considered Ms K didn't have a reasonable basis for believing this was a genuine situation.

Ms K had nothing further to add to the investigator's view. Santander said this was a failed investment.

I issued my provisional decision on 29 May 2025, explaining why I was intending on upholding the complaint in full. Ms K confirmed she has nothing further to add.

Santander did not agree. It said:

- The customer has been exonerated of all liability regardless of the fact that she did not carry out any research into the company she was investing in, and did not receive any documentation or request any documentation before making her payment.

- Given the amount she was investing it would have expected her to fully review where she was investing her money and ensure she understood the details of the investment and the returns expected.

- It questions why she did not seek professional investment advice from an independent source.

- She did not receive a confirmation for the payment by way of a receipt. But the payment was invested for her as she received returns on the funds. This supports its stance that this is a failed investment.

- It believes Ms K should refer her claim to the administrators and failing that the customer should see if her loss can be reviewed by the FSCS.

- It contests the company that actually received the funds was being run fraudulently, and the reason for this is there has been no evidence provided to confirm this, or any prosecutions or arrests made.

- At the time she made the payment, N was authorised by the FCA as is confirmed on the FCA website and it would appear they went into liquidation.

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.

Under the CRM Code the *starting principle* is that a firm should reimburse a customer who is the victim of an APP scam. So it's not a question of 'exonerating' the customer of all liability.

The exception to reimbursement here revolves around whether Ms K had a reasonable basis for believing this was a legitimate investment opportunity – not what research she did or what documentation she received. That is not the test here. The Lending Standards Board has confirmed that there is no standard of care or specific responsibilities placed on customers via the Code and the Code does not bind customers.

Ms K found out about the opportunity through a friend, and they looked at the website and called the company up. This was a sophisticated scam – so much so - Santander even *now* considers this to have been a genuine investment. So, it is not unreasonable that at the time (having looked at the website and called the company) with no reason (indeed there was nothing in the public domain) for Ms K to reasonably infer that a scam was taking place there was simply no reason for her to question the legitimacy of the investment any further.

All in all, it was a very plausible set of circumstances. In any event, anything further Ms K could have done *would not have had a material effect on preventing the APP scam that took place*. So, I don't think Santander can fairly apply this exclusion.

My provisional decision outlined the situation regarding the FSCS. While I'm sympathetic to Santander that it, rather than another financial business, will be solely responsible for Ms K's loss, given that Santander was a signatory to the CRM Code at the time the payment was made, I don't find that Santander being responsible creates an unfair outcome. Neither can I direct Ms K to pursue the matter solely with N, the liquidators or the FSCS.

I don't dispute N was a genuine regulated company at the time – again my provisional decision outlined why that relationship was incidental to the scam.

Whilst M 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 is the balance of probabilities).

Having considered Santander's further points above, I see no reason to depart from the conclusions set out in my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint. For completeness, I have set this out below.

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 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 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 Ms K 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."*

Ms K wasn't deceived into transferring 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 what Ms K has told us, Ms K 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. From what I understand and know about M, it purported to only ever lend to sophisticated renewable energy investors and experienced renewable energy developers.

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 Ms K 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 (Financial Conduct Authority) provided a warning in October 2021 about M providing financial services when it was not authorised to do so. Ms K 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.

Ms K made the payment to N – a regulated entity

I appreciate Ms K made the payment to N, rather than directly to M but given what is known of the relationship between N and M it's very likely the funds that credited N's account were passed to M within a few days (likely minus a small fee retained by N) and was carried out under a pre-existing agreement. More importantly, Ms K does not seem to have a customer relationship with N (indeed Ms K seems to have been unaware of the involvement of 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 Ms K 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 Ms K's control at the point it arrived at N and effectively under the control of M. That means that the payment Ms K 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 Ms K'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 Ms K 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 Ms K is now complaining to us about in connection with the activities of Santander.

As I have determined that this complaint should be upheld, Ms K 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 he 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 Ms K has already made a claim at FSCS in connection with this matter and in the event the FSCS pays compensation, Ms K 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 Ms K 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

Under the CRM Code the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Ms K. 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. Although Santander has not established that any of those exceptions apply, for completeness I find that none apply in this case. I have explained why below:

Did Ms K have a reasonable basis for belief?

I need to consider not just whether Ms K believed she was sending money for an investment, but whether it was reasonable for her to do so. It's important to highlight that the CRN Code also says:

The assessment of whether these matters can be established should involve consideration of whether they would have had a material effect on preventing the APP scam that took place.

Ms K says she had a friend who discovered the investment with M. They looked at the website together and Ms K actively approached M regarding the investment opportunity and spoke to them on the phone. So, Ms K initiated contact with M rather than being cold called.

Ms K told us she didn't have any documentation and didn't do any further checks. I don't dispute there's more that Ms K *might* have done, before deciding to invest. However, that isn't the test I'm considering here. And there is no standard of care or specific responsibilities placed on customers via the Code and the Code does not bind customers. This is something the Lending Standard Board pointed out in its 2022 Review of adherence to Contingent Reimbursement Model Code https://www.lendingstandardsboard.org.uk/wp-content/uploads/2022/09/CRM-22-Summary-report-Final-0922.pdf.

I need to determine whether I think Ms K acted unreasonably in believing this was a legitimate opportunity. There was nothing in the public domain at the time about either M or N that Ms K could've reasonably inferred from that a scam was taking place in an otherwise plausible set of circumstances. Given Santander's strength of feeling that this remains a genuine investment - it's difficult to see how – at the time Ms K made the payment - there was anything about the investment that should have caused her concern.

Having considered everything holistically, I find that Ms K would have had a reasonable basis for believing this was a genuine situation.

Did Ms K ignore an effective warning?

Another exception to reimbursement is if Ms K ignored an effective warning.

The CRM Code says that effective warnings should be risk based and, where possible, tailored to the APP scam risk indicators and any specific APP scam types identified through the user interface with which the customer is initiating the payment instructions.

The CRM Code also says that when assessing whether the firm has met those standards, consideration must be given to whether compliance with those standards would have had a material effect on preventing the APP scam that took place.

The CRM Code sets out the minimum criteria that a warning must meet to be an 'Effective Warning'.

Santander's electronic warning at the time of Ms K's payment advised "*anyone cold calling with investment opportunities are likely to be criminals…if someone is pressuring you, please stop now*".

I appreciate that, in providing Ms K with the message above, Santander took steps to provide her with an effective scam warning during this payment journey. However, despite this, I'm not persuaded the warning met the minimum requirements of an Effective Warning under the CRM Code.

As I said above, Ms K wasn't cold called, and she initiated the contact with M having viewed the website (rather than being pressured). In my view, Ms K had already been through the steps suggested by Santander to avoid a scam. I think Ms K might reasonably have concluded the warning simply wasn't relevant to her. In any event, I'm not convinced a better warning would have made a difference in this scenario anyway given the sophistication of this particular scam and so in my view, the effective warning exception cannot be fairly applied.

Recovery of funds

In light of my conclusions above, it is not necessary in this case to consider whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. 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 November 2020. The scam wasn't reported until September 2023. I understand that Ms K didn't know she was the victim of a scam before this, but the delay means any recovery action would be unlikely to have been successful.

Putting things right

In order to put things right for Ms K, Santander UK Plc must:

Refund Ms K in full less any returns she received (so £10,000 less £845.15 = £9,154.85)

Because Ms K has been deprived of this money, I consider it fairest that Santander UK Plc add 8% simple interest to the above refund from the date the claim was declined to the date of settlement.

If Santander UK Plc is legally required to deduct tax from the interest it should send Ms K a tax deduction certificate so she can claim it back from HMRC if appropriate.

As it's possible Ms K 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 £9,154.85 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 Ms K for her consideration and agreement.

My final decision

My final decision is that I uphold this complaint and Santander UK Plc must put things right for Ms K as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 14 July 2025.

Kathryn Milne
Ombudsman