The complaint

Mrs P complains that Santander UK Plc hasn't reimbursed her after she says she fell victim to a property development investment scam.

What happened

In June 2021, Mrs P invested £50,000 in a company I'll call 'D' who said it was investing in property development. Mrs P was introduced by someone known to her through work and met with a director of D in person before investing.

Mrs P initially received returns on her investment as expected, but these stopped and D got into financial trouble. Mrs P then says she realised D wasn't a genuine investment opportunity. D appointed an administrator in mid-2022.

Mrs P complained to Santander in January 2024 and asked for it to reimburse her funds. Santander said this was a civil dispute between her and D, so she wasn't covered under the Contingent Reimbursement Model code ("CRM code" or "the Code") she'd referred to.

Mrs P came to our Service and our Investigator upheld her complaint. Mrs P accepted the assessment, but Santander disagreed and maintained this was a civil matter and D was operating legitimately at the time Mrs P invested. So the case 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.

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.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) 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 provider to reimburse the customer even though they authorised the payment.

The CRM Code is of particular relevance to this case. It's a voluntary code which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this in all but a limited number of circumstances. Santander was a signatory to the Code at the time the payment in dispute was made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An "APP scam" is defined by DS1(2)(a) as:

> *"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."

If I conclude that the payment here meets the required definition of a scam then Mrs P would be entitled to reimbursement, unless Santander has shown that any of the exceptions as set out in R2(1) of the Code apply.

The LSB has said that the CRM Code doesn't require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So, in order to determine Mrs P's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it's more likely than not that she was the victim of a scam rather than this being a failed or a bad investment.

Has Mrs P been the victim of a scam, as defined in the CRM Code?

The Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't 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 is met, as set out above.

I don't consider the first part of the definition quoted above (DS1(2)(a)(i)) is met in this case. This isn't in dispute. But what is in dispute is whether Mrs P's payments meet DS1(2)(a)(ii). So I've gone on to consider if her intended purpose for the payments was legitimate, whether the intended purposes she and D had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of D.

From what I've seen and what Mrs P has told us, I'm satisfied that she made the payments with the intention of investing in property development. I haven't seen anything to suggest that she didn't think this was a legitimate venture – and as Santander argues this is a civil matter, it too seems to accept this.

I've then 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 evidence I hold suggests that when D first started, it was involved in property development, although it's not clear if all funds received were used for this purpose. But by the time Mrs P became involved with it in 2021, it was no longer operating in this same way.

From 2019, large sums were regularly being withdrawn for the benefit of D's directors and other funds were used to pay returns to existing investors. By 2021, D also had links to another company which our Service considers was most likely running a Ponzi forex investment scheme. D's investors funds were diverted to accounts with this company, despite it purporting to offer a very different and much higher risk investment than what they had agreed to with D.

Our Service is also aware that D's directors and this other company's directors formed a new company together at the same time as D's behaviour changed in 2019. So this strongly indicates that D wasn't just choosing to invest some of its investor's funds in a different investment – which would still have issues as explained above. But instead indicates that D and this other company were working together at this time. And as we consider it most likely this other company was operating a scam, this indicates D was too by the time Mrs P invested.

I accept Mrs P did received some returns from D, but as above, we're also aware that some investor's funds were used to pay returns. And it seems to be the case that any returns investors received were likely sent to encourage further investment, either from existing investors or new investors who were recommended the opportunity from others who had already invested. Mrs P received a commission payment from D, so it seems she also acted in this way due to receiving returns, the chat we hold suggesting she introduced a close family member.

Even if any of Mrs P's funds were used for the intended purpose of property development, I'm satisfied therefore that D was, most likely, operating a sophisticated scam. I consider it most likely D's purpose for the funds was different to what Mrs P understood and intended. And that this was because D intended to dishonestly deceive her and took the funds for a fraudulent purpose. As a result, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

Is Mrs P entitled to a refund under the CRM code?

Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mrs P. 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.

One such circumstance might be when a customer has ignored an Effective Warning. A second circumstance in which a bank might decline to reimburse, is if it can be demonstrated that the customer made the payments without having a reasonable basis for belief in a specific set of things.

Santander hasn't argued that it provided an Effective Warning in this case. But it has said that Mrs P's actions – by selecting "paying for a service", not saying she was investing – prevented it from giving her a relevant warning. The relevant exception to reimbursement in the Code looks at whether Mrs P *ignored* an Effective Warning. As Santander seems to accept it didn't give her one, even if this was due to her actions, it can't then apply this exception.

It is arguable in this case that Santander couldn't have provided a warning that was 'Effective' *and* would have prevented Mrs P going ahead in the circumstances of this particular scam. But this doesn't change Santander's overall position here, as whether any reimbursement is due is then dependent on if any other exceptions apply.

As part of its submission to our Service, Santander hasn't indicated it thinks Mrs P didn't have a reasonable basis for belief. I also don't consider this to be the case.

D was genuinely registered at the time Mrs P invested and there wasn't concerning information publicly available at this time. Mrs P was also recommended the investment by a colleague who personally knew one of D's directors, who she then met in person, which would've given it credibility. She joined a WhatsApp group about D around a month before she invested and asked questions of others who have invested to understand more about the opportunity and how it was going to make sure she understood it clearly. So I'm satisfied Mrs P did have a reasonable basis for belief and so, even if Santander had sought to apply this exception, it wouldn't apply.

I can't see that any other exceptions to reimbursement could apply in this case. And as Santander hasn't established that any of the applicable exceptions to reimbursement under the Code do apply here, I'm satisfied it should refund the money Mrs P has lost in full.

Putting things right

I don't think any intervention I reasonably would've expected Santander to carry out would've prevented Mrs P from making the disputed payments. This is because I don't think any of the information that I would've reasonably expected Santander to have known or indicated to Mrs P to research at the time of the payments would've uncovered the scam or caused significant concern.

As above, Mrs P received some returns from D and received a commission payment she never would've had, had she not got involved in this scam. So I'm satisfied the credits she received from D, totalling £7,375, should be deducted from what Santander reimburses her.

The CRM Code allows firms 15 days to make a decision on the outcome of the claim. So, considering this provision, I think Santander should've responded to Mrs P's claim to it – made in January 2024 – and reimbursed her loss under the CRM Code within 15 days of this. So I think Santander should now pay 8% simple interest per year on the refund from 15 days from this time until the date of settlement.

Therefore, in order to put things right for Mrs P, I direct Santander UK Plc to:

- Refund Mrs P the £42,625 she's lost as a result of this scam
- Pay 8% simple interest per annum on this amount, from 15 days after Santander received Mrs P's complaint letter in January 2024 until the date of settlement

As D is going through insolvency proceedings, it's possible Mrs P 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 this process before paying the award.

My final decision

My final decision is that I uphold this complaint and I require Santander UK Plc to put things right for Mrs P as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 25 September 2025.

Amy Osborne
Ombudsman