

The complaint

Mrs L 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.

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

What happened

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

Mrs L was introduced to an investment company which I'll refer to as 'Company B'. Mrs L had been attending training courses and events ran by a property business training and wealth education company – whom I'll call 'Company A'. Mrs L attended a three day 'bootcamp' seminar and she says the director/owner of Company A informed people about Company B advising he had invested as had his family, colleagues and friends and they were all doing well from it. Mrs L says lots of people who attended Company A's bootcamp invested with Company B. And Mrs L, seeing other people whom she knew get returns, decided to invest also.

Mrs L's understanding was that she would enter into a loan agreement with Company B, on the basis that her funds would be used for general investment purposes (stocks and shares and Foreign Exchange 'Forex' trading) and repaid in full after an agreed fixed term. She says she was guaranteed a rate of interest which she believed to be around 20%, which could be received as a monthly return, or full payment at the end of the fixed term. Mrs L's initial agreement was to loan Company B £60,000 for a fixed term of 12 months with Company B repaying this principal amount to Mrs L, with interest payable on the unpaid principal.

Between 24 and 31 August 2021 Mrs L made six faster payments of £10,000 to Company B. And this was made to the details Company B provided her, which was for an accountancy firm that Company B was using, which I'll call Company D.

Mrs L believed the investment was going well and planned to exit it after the 12 months expired. But in August 2022 she was told by the owner of Company A that all the money with Company B had been lost.

Mrs L, through her professional representative, reported the matter to Santander in July 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 Mrs L on 9 September 2024. It considered that the payments Mrs L had made to Company D (the accountancy firm) amounted to a civil dispute – and the CRM Code didn't apply to civil disputes.

Unhappy with the response, Mrs L referred the matter to our service.

One of our Investigators looked into the matter and upheld Mrs L's complaint. In short, they explained that they considered Mrs L had fallen victim to a scam orchestrated by Company B. The Investigator acknowledged there was an ongoing police investigation into Company B, but considered there was enough evidence to suggest Company B was more likely than not operating as a scam – and this was based on a number of factors. And 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. 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 payments Mrs L made (£60,000), as well as 8% simple interest from the date Santander declined Mrs L's claim under the CRM Code until the date of settlement.

Mrs L accepted the findings, however Santander did not.

In short, Santander considered:

- that at the time the APP scam claim was raised the actual payments were made to Company D and not Company B. And Company D are still an active trading entity on Companies House.
- that in relation to Company B, its 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 Company 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.
- Mrs L made payments to Company D and not to Company B. So, the loss of funds in Mrs L's case occurred later in the chain when determining whether Mrs L's payments fall 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 Company D fit into the picture, and the ongoing investigations will shed light on that.

- it is unclear whether Mrs L 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 Mrs L agreeing to the appropriate terms of an 'assignment of rights' with Santander.
- that Mrs L didn't have a reasonable basis of belief when making the payments, as while she attended a presentation about investing, she hasn't demonstrated she did any checks at all either in relation to Company B or Company D where she made the payments to. It also considered Mrs L chose an incorrect payment purpose ('anything else') when making the payment and did not give Santander the opportunity to provide her with a warning that related to investment scams.
- that overall, its primary position is that neither it nor our service is in a position to determine whether Mrs L's case comes within the scope of the CRM Code.

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 Mrs L paid Company D and not Company B, and therefore the payment journey undertaken is one that is not 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 Mrs L entered into was with Company B. And Company B provided the bank account details of where it wanted the funds to be paid – which was Company D, an accountancy firm Company B was using. So, it was Company B's client account at Company D. And therefore, the account into which the funds were paid to was solely in the control of Company B and not Company D – which satisfies (b). So, I'm satisfied the payments Mrs L made are therefore within scope of the CRM Code.

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

Now it is known that the payments were in relation to Company B, Santander says its primary position is to rely 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 Company B was operating a scam or not – and therefore whether Mrs L'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 Mrs L'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 Mrs L 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 Mrs L first raised her claim with Santander in July 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 Mrs L 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 Company 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 Mrs L 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 Mrs L 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 Mrs L transferred funds to Company B for what she believed to be legitimate purposes, but which were, in fact, fraudulent.

It's evident that Company B had some features that gave it the impression of operating legitimately. There are those individuals associated with Company 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 Company B was operating as a scam:

- Company 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, Company B made a loss of around £600,000.
- Despite this low proportion of investment, Company 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 Company B by other investors.
- It therefore seems that Company 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 Company 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 Company B, we've seen evidence that notable proportions of payments made to other firms were passed on both to Company 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 Company B was not used for its intended purpose. The evidence suggests that Mrs L 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 Mrs L 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 Mrs L entitled to reimbursement under the CRM Code?

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

- Mrs L made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or B was legitimate.
- Mrs L 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 Mrs L had a reasonable basis to believe Company B was legitimate and was providing a genuine investment product.

In doing so, I have considered how Mrs L was introduced to Company B. I consider this to be a key factor in considering whether Mrs L held a reasonable basis of belief when making the payments to Company B. Mrs L was introduced to Company B after attending a three-day boot camp/seminar run by Company A – who are a legitimate company and had been running for a number of years. The director/owner of Company A had already invested, as seemingly had his family and friends. Mrs L and others who attended were shown the successes of investing with Company B and saw the returns of those who had invested. So, I can understand after seeing and hearing first-hand about Company B by the directors of Company A and by other investors, coupled with those individuals having already invested and with things seemingly running as planned, why it would have seemed genuine investment company to Mrs L.

When I consider how Mrs L was introduced to Company B and think about the sophistication of this scam such that others like those at Company A promoted investing with Company B, I can further understand why Mrs L felt the investment was a genuine one at the time.

I accept some of the claims made by Company B about the returns it could generate seem unlikely. But, and importantly, alongside this I also have to weigh up what Mrs L had been told about Company 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 recommendations she received from those she trusted, outweighs the concerns that Mrs L perhaps ought to have had about the returns being claimed.

When making the payments towards her investment, Mrs L paid an accountancy firm, rather than B, But I am mindful these were the correct confirmed details Company B advised her to make the payments to. I don't think this is particularly surprising considering the nature of the business they were paying being accounting, rather than an entirely irrelevant firm.

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

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

I have also considered whether Santander can rely on the exception to reimbursement that Mrs L ignored what the CRM Code deems to be an 'Effective Warning'. Santander says Mrs L chose the payment purpose as 'anything else' when she made the payments and was therefore provided with a warning based on that payment purpose and not a more relevant 'investment' scam warning.

However, 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 Mrs L had no reason to believe that Company B wasn't a genuine investment company at the time. So, I think it is fair to say that even if Mrs L had chosen a more appropriate payment purpose such as 'investment' it wouldn't have had a material effect on preventing the scam such was her belief in things and that Company B was 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 Company B and any subsequent proceedings that may happen as a result. I am satisfied, based on the evidence available, that Mrs L 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 Mrs L 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 Mrs L under any processes relating to the police investigation and any potential compensation that may be returned to victims.

With regard to additional compensatory interest, I consider that it ought to be applied from 1 August 2024 which is when Santander declined reimbursing Mrs L under the CRM Code. I acknowledge Santander provided an outcome that it considered the matter was a civil dispute – and that answer was based on the payments being made to Company D. But I'm satisfied there was enough information available to Santander at that time Mrs L's representative reported the matter to it, which included information about Company B, to have allowed it to carry out an assessment and/or verify any information it needed to about the scam and provide reimbursement to Mrs L under the CRM Code.

Putting things right

I uphold this complaint. Santander UK Plc should pay Mrs L:

- £60,000 she lost to the scam orchestrated by Company B; and
- 8% simple interest on that amount from the date it declined Mrs L's claim under the CRM Code (which was 1 August 2024) 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 Mrs L to accept or reject my decision before 15 October 2025.

Matthew Horner
Ombudsman