

### **The complaint**

Ms H complains that Santander UK Plc hasn't reimbursed the funds she says were lost to a scam.

### **What happened**

Ms H says that she was introduced to an investment opportunity by her brother-in-law, who had been successfully investing with a company I'll call 'B' for two years. Directors of B claimed to have developed an algorithm that allowed them to trade at a superior rate and achieve profit of 50% a year. After visiting B's offices Ms H initially agreed to invest in stocks via a trading account organised by B, and this has been dealt with as part of a separate complaint. She then invested £100,000 in a 'loan agreement' which she understood would earn an annual return on her investments of 20%. The £100,000 payment went to an accounting firm. Ms H did not receive any returns relating to the loan agreement investment.

B has now gone into administration and there is an ongoing police investigation into them. Ms H instructed a representative to send Santander a letter of complaint in August 2024. Ms H said that B operated a Ponzi scheme for a variety of reasons including the fact B wasn't FCA regulated when it should have been, the contracts offered returns that were too good to be true, and managed funds agreements said that only 10% of invested funds were at risk. Ms H said Santander should reimburse relevant payments under the Contingent Reimbursement Model Code ('CRM Code'), which only includes the £100,000 payment on 29 July 2021.

Santander said these cases were on hold as this was a complex investigation which would take some time. The case was passed to our service and our Investigator looked into it. They considered the payment of £100,000 under the CRM Code. They felt Ms H was the victim of an APP scam as defined in the CRM Code and Santander couldn't fairly apply an exception to reimbursement, so Santander was responsible for her full loss. The investigator recommended that Santander pay Ms H £100,000 plus interest.

Ms H agreed with the findings however Santander did not. They felt they had acted fairly in holding off from making a scam decision on this case pursuant to R3(1)(c) of the Code which permits a firm to do so where the outcome of a statutory investigation might reasonably inform the firm's decision. In this case, they felt it should not be concluded until the external police investigation had been concluded.

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 be good industry practice at the time.

In broad terms, the starting position at law is that a building society such as Santander is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. In law, Ms H is responsible for payments she has authorised.

Is it appropriate to determine this complaint now?

Santander has said it is reasonable to rely on R2(1)(c) in this case and delay providing an answer on this complaint. So, I have considered whether it would be appropriate to delay my decision in the interests of fairness.

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 – as explained above – is the balance of probabilities).

In order to determine Ms H'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 Ms H 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 Ms H first raised her claim with Santander in August 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 Ms H 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 external processes might result in some recoveries for B's creditors/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 Ms H under those processes in respect of this investment before paying anything I might award to them in this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for any police (or other) investigations to be completed for me fairly to reach a decision on whether Santander should reimburse Ms H under the provisions of the CRM Code.

Have Ms H been the victim of an APP scam as defined by the CRM Code?

Santander has signed up to the CRM Code, which provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam in all but a limited number of circumstances. The CRM Code applies to authorised push payment (APP) scams which are defined as:

- (a) ...a transfer of funds executed across Faster Payments...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.

To decide whether Ms H is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Ms H thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments, and whether this broadly aligned with what Ms H understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Ms H thought her funds would be used for general investment purposes as part of a loan agreement. I haven't seen anything to suggest that she didn't consider these purposes to be legitimate.

I've gone on to consider what purpose B had in mind and whether it was in line with what Ms H thought.

The investigator set out why they thought B operated a scam. I agree with these findings. Broadly, B received around £28m in investment capital from investors with loan agreements or managed funds agreements. Of that £28m, less than 17% was invested with around £4.1m being returned. This indicates a huge trading loss, yet around £19m was paid out to investors. Overall, I think it more likely than not that B operated a Ponzi scheme.

Ms H was offered rates of return of around 20%. There is no evidence to demonstrate that B was successfully trading and was able to generate such substantial profits. B also wasn't regulated by the FCA as it needed to be to undertake the activities claimed. As a private investment fund, B should not have solicited investments from retail investors or the general public as it did.

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 as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

#### Application of the CRM Code

The CRM Code says that Ms H is entitled to a full refund unless Santander can establish that an exception to reimbursement applies.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

There are further exceptions outlined in the CRM Code, but they don't apply to this case.

#### Did Ms H have a reasonable basis for believing the investment was genuine?

Having carefully considered the evidence I'm not persuaded Santander could fairly apply this exception to reimbursement for the following reasons:

- Ms H was introduced to the investment opportunity by her brother-in-law, who had been successfully investing with B for around two years at that point and had received regular returns on his investment.

- Ms H visited B's office before deciding to invest and met the directors, who appeared to be knowledgeable and professional.
- Ms H viewed B's website, which she says was professional. She also reviewed brochures and other promotional literature and she signed an agreement with B.

I'm also not satisfied that Santander has demonstrated Ms H ignored an effective warning when the payment was made. It has said that as the payment was made in branch, there would have been a scam conversation around it. But this does not evidence that Ms H therefore ignored an effective warning as set out in the Code. Under the provisions of the CRM Code, this means that Santander should reimburse the transactions covered by the code in full (subject to what I say below).

### **Putting things right**

As there is an ongoing police investigation, it's possible Ms H 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 the liquidation process in respect of the 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 H for her consideration and agreement.

I calculate Ms H's outstanding loss from the payment to be £100,000. Santander should also add 8% simple interest from 15 days after the claim was received to the date of settlement.

### **My final decision**

I uphold Ms H's complaint and recommend Santander UK Plc pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 24 December 2025.

Rebecca Norris  
**Ombudsman**