

The complaint

C complains Santander UK Plc hasn't reimbursed it after it fell victim to an investment scam.

What happened

In May 2020, C invested £50,000 in a company I'll call 'B' who said it had developed an algorithm to successfully trade in forex and some other investments. C was introduced to B by someone known to it and met with the directors of B in person before investing.

When C went to withdraw from the investment it was explained this wasn't possible at the time because of the nature of the agreement signed. And by the time C was then expecting to receive returns, C says it discovered that B wasn't a legitimate venture, and its money had been lost. B went into administration in 2022.

C complained to Santander and asked for it to reimburse its funds. Santander said this was a civil dispute between C and B, so C wasn't covered under the Contingent Reimbursement Model code ("CRM code" or "the Code") as C had said.

C came to our Service and our Investigator upheld its complaint. C accepted the assessment, but Santander disagreed and maintained this was a civil matter and B was operating legitimately at the time C 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 C would be entitled to a 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 C'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 C was the victim of a scam rather than this being a failed or a bad investment.

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

As referenced above, Santander has signed up to the voluntary CRM Code which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

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 C's payment meets DS1(2)(a)(ii). So I've gone on to consider if C's intended purpose for the payments was legitimate, whether the intended purposes it and B had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of B.

From what I've seen and what C has told us, I'm satisfied that it made the payments with the intention of investing in forex trading. I haven't seen anything to suggest that C 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 B was in fact operating a Ponzi scheme and not running a genuine investment. While some of the funds received were invested as described, the evidence we hold suggests this was less than 17% of what was received for this purpose. And evidence indicates the funds that were invested resulted in a loss. Records also indicate that, despite this loss and the investors' intentions for the funds, almost 68% of the capital received was paid out to investors.

B was not FCA regulated, but some of the activities it was carrying out required regulation – as it was soliciting investments from the public and retail investors. And it appears to have mis-lead investors on its need to be regulated. Its accounts also show it withdrew funds intended for investing and paid these to accounts linked to B and its associates.

While it's possible C's funds made up some of the amount that was genuinely invested, I'm not persuaded that B's true purpose in taking C's funds was to invest it as C understood. Instead I consider it most likely B's purpose for the funds was different to what C and other investors understood and intended. And that this was because B intended to dishonestly deceive C 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 C 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 C. 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 has argued that it provided an Effective Warning in this case and provided the Investment scam warning it would've shown C, which it says met the requirements under the CRM Code. I have considered the evidence provided to determine whether I agree.

I appreciate Santander took steps to provide an effective scam warning at an applicable point of the payment journey. However, despite this, I'm not persuaded it has demonstrated that the warning met the requirements of an Effective Warning.

The CRM Code sets out minimum criteria that a warning must meet to be an '*Effective Warning*' and this includes the warning being Clear, Impactful and Specific. The warning Santander gave starts "*If you have been cold-called or contacted out of the blue...*". C had not been, so immediately it's unlikely it would consider this warning applicable to it. The warning doesn't go on to give examples of any other kind of contact or ways scams might start. It seeks to cover one kind of contact for investment scams, one which didn't apply here. So, I don't think the warning given was sufficiently impactful as required by the Code.

It is arguable in this case that Santander couldn't have provided a warning that was 'Effective' in the circumstances of this particular scam. But in that situation, it then couldn't rely on the exception to reimbursement linked to Effective warnings. So this doesn't change its overall position here, as we'd then be looking to see if any other exceptions did apply.

As part of its submission to our Service, Santander hasn't indicated it thinks C didn't have a reasonable basis for belief. It's set out how C invested in a legitimate company after being recommended it by a friend – and the fact it considers this was a legitimate venture doesn't then lend itself to C not having the necessary belief as defined by the Code.

While I have set out my concerns around the legitimacy of the investment, I accept B was genuinely registered at the time C invested and there wasn't concerning information available at this time. And C was recommended this opportunity by someone well known to it, who strongly believed this was a legitimate venture and arranged for C to meet with the directors of B in person. This would've given B credibility. So I'm satisfied C did have a

reasonable basis for belief and so, even if Santander sought to apply this exception, it also doesn't apply.

As C is a micro-enterprise, there is an additional exception that could apply which looks at whether C followed its own internal procedures and if it didn't do so, if this could've prevented it falling victim to the scam. Santander hasn't sought to apply this exception. But in any event, I've not seen anything to indicate that something in C's internal procedures would've shown that B was operating a scam at the time it was making the payment. And I can't see that any other exceptions to reimbursement could apply in this case.

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 C lost in full.

Putting things right

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

But 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 C's claim to it – made on 20 March 2024 as evidenced by C's representative – and reimbursed its 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 after this date until the date of settlement.

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

- Refund C the £50,000 payment it made as a result of this scam
- Pay 8% simple interest per annum on this amount, from 15 days after Santander received C's complaint letter on 20 March 2024

As B is under the control of administrators and there's an on-going Police investigation, it's possible C 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 administrative 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 C as set out above.

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

Amy Osborne
Ombudsman