

The complaint

Mr S complains that Santander UK Plc ('Santander') won't reimburse the money that was lost to a scam.

What happened

The background is known to both parties. I won't repeat all the details here.

In summary, Mr S says he came across a company (I'll call 'K') when searching online for investment opportunities. He registered his interest and was contacted by a representative at K. He says he understood K was offering returns of 10% per year (which he thought were reasonable) and that the investment into K would be made through another company ('N').

In September 2020, he and his Wife (Mrs S) paid £5,000, from their joint account at another bank, to N. And Mrs S received a 3-year bond certificate from K. The payment in dispute here is the one Mr S made in November 2020 for £20,000 from his Santander account to N. This investment was again taken out for Mrs S and she received a 4-year bond certificate from K. Mr S says the bond was sold to them as investments providing short-term finance for building projects, that K had provided brochures to that effect, and that he thought if something did go wrong, then the investment was backed by assets in any event.

He also says that he and Mrs S took the decision to invest after seeing N was regulated by the Financial Conduct Authority (FCA) and covered by the Financial Services Compensation Scheme (FSCS). He says they both thought things were going well until they discovered N and K had gone into liquidation. N entered liquidation in 2021. Insolvency proceedings involving K began in 2023 and, in July 2023, its creditors successfully applied to liquidate it. When a claim was made to the FSCS, its response was that the claim had to be submitted to the relevant banks and, if necessary, taken through the complaints process (including our Service) before it would consider things further.

Santander didn't agree to reimburse Mr S. In response to his claim, it said it had found no evidence of fraudulent activity. In reply to his complaint, it said the claim was declined as a civil matter. In turn, Mr S referred the complaint to our Service. Our Investigator considered it and upheld it. In brief, he thought K was operating a scam and concluded that Santander should refund his payment in full (less any returns received) plus interest.

Santander didn't accept that outcome. In summary, it has said:

- The case sits outside of the Contingent Reimbursement Model Code ('CRM Code') as it has been deemed a civil dispute. The insolvency process and further investigations are still ongoing and it's too soon to make a judgment on these cases.
- The funds were sent to N, a legitimate entity. What N invested in, isn't something it's accountable for. N was regulated and it wouldn't have had concerns about it. Confirmation of Payee and a warning was shown to Mr S when making the payment.
- Any refund made at this time could be duplicated by the conclusion of the insolvency

process. The account is in Mr S's name but the bond was taken out in the name of Mrs S only. The loss isn't that of Mr S as the complainant.

As the matter couldn't be resolved informally, it's been passed to me to decide.

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.

Having done so, I agree with the investigator and for largely the same reasons.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals a customer authorises in accordance with the Payment Services Regulations (2017) and the terms and conditions of the customer's account. However, where a customer made the payment as a result of the actions of a fraudster, it may sometimes be fair and reasonable for a firm to reimburse the customer even though the payment was authorised.

The CRM Code

Santander was a signatory to the CRM Code. This requires firms to reimburse victims of certain types of scams in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the Code.

Is it appropriate to determine this complaint now?

A key point in dispute is whether or not K was operating a scam. It's not clear if Santander is relying on R3(1)(c) of the Code to defer making a decision on this point, so I'll first cover this briefly. R(3)(1)(c) of the Code says that if the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, then the firm is allowed to wait for the outcome of that investigation before making a reimbursement decision.

But this provision only applies when a firm hasn't made a decision on whether to reimburse a customer. In this case, it's clear from Santander's submissions that it responded to Mr S's claim for reimbursement by refusing it on the basis that it considered it a civil matter. As a result, I'm satisfied Santander cannot now rely on the above provision.

That said, I'm aware there may be situations where it's appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it'll often be possible to reach conclusions on the main issues on the evidence already available.

Here, I understand there's no ongoing police investigation. But criminal proceedings have a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which is the balance of probabilities). The Lending Standards Board has said 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 to decide Mr S's complaint I need to ask myself if I can be satisfied, on the balance of probabilities, that the available evidence indicates it's more likely than not that Mr S was the victim of a scam rather than a failed investment.

I'm aware Mr S first raised his claim with Santander in early 2024 and I need to bear in mind this Service was set up to resolve complaints quickly and with minimum formality. I don't think delaying giving Mr S an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I don't think it'd be fair to put off my decision

unless there's a reasonable basis to suggest the outcome of any external investigation may have a material impact on my decision over and above the evidence already available.

Was K operating a scam?

I've considered whether Mr S's claim falls within the scope of the CRM Code, which defines an APP scam as:

...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 Mr S was the victim of an APP scam as defined in the CRM Code I've considered:

- The purpose of the payment and whether Mr S thought this purpose was legitimate.
- The purpose the recipient (K) had in mind at the time of the payment, and whether this broadly aligned with what Mr S understood to have been the purpose of the payment.
- 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.

Mr S believed the purpose of his payment was to provide an investment to K that would be passed on to other small to medium sized businesses in the UK property finance industry, by way of short-term bridging loans to companies involved in property development. He understood K would provide regular returns and profit by the end of the investment term. I haven't seen anything to suggest he didn't consider this to be a legitimate purpose.

I've considered whether there's convincing evidence to show that the true purpose of the scheme was significantly different to this. And so, if this was a scam or genuine investment.

The Insolvency Service has said it hasn't found any evidence of K providing bridging loans – which was exactly what K told investors it would be doing. This statement was made in May 2023 when the Insolvency Service said its investigation was ongoing. Even after extensive investigations the position hasn't changed. The Insolvency Service also had concerns over the trading of K and said it was acting as a Ponzi scheme. It hasn't found any evidence that K conducted any investments.

The Insolvency Service and the insolvency practitioner involved in the liquidation process, have both confirmed K's directors continue to fail to co-operate with the Insolvency Service's investigation into the company. The directors failed to attend court for a private examination and have continued to fail to provide information. They have said that this is frustrating the liquidation process. I realise that, on its own, this isn't evidence of an intention to defraud, but I've considered it alongside the other available evidence.

Other concerns are that K became uncontactable. This isn't what you'd usually expect with a genuine organisation. According to Companies House, K's principal activities are listed as 'buying and selling of own real estate and other-letting and operating of own or leased real estate', which is different to how it purported to be using investors' money.

Overall, there's a lack of any evidence that K was operating as a genuine company. Most consumers invested a large amount of money and received very small monthly returns for a short period before this stopped – typical of how a Ponzi scheme operates. And ultimately I've not been provided with any information to show K was operating in line with the way it agreed with its investors prior to investment. On balance, I'm satisfied this was a scam.

Other matters

I've thought about Santander's comments that Mr S's payment went to N. The involvement of a genuine intermediary doesn't exclude the possibility of the CRM Code applying. The CRM Code doesn't require the initial recipient of a payment to be an account owned by and for the benefit of a fraudster. I consider that the funds here were under the control of the fraudster at the point they arrived at N. Mr S doesn't seem to have had a customer relationship with N, and I'm satisfied N was acting on behalf of K and not Mr S. As the funds were out of Mr S's control the payment is capable of being considered under the CRM Code.

I've also thought about Santander's comments that the account was in Mr S's name while the bond was taken for Mrs S. But I'm satisfied on the evidence that, from their perspective, the investment had been sold to them both. We also know that the money came from Mr S's account, that the complaint has been brought by him as the eligible party, and that he was engaged in the checks and decision to invest. And while the bond was in Mrs S's name, that doesn't mean Santander shouldn't refund the loss in such circumstances. To note, Mrs S has been added to the case as an interested party and will be aware of its outcome.

Reimbursement under the CRM Code

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

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

There are other exceptions under the Code that don't apply to this case.

It's for Santander to establish an exception to reimbursement applies. In correspondence to our Service it has said that the payment in dispute was flagged as suspicious and that a call was held at the time. It has also said that a written warning was presented online.

But I understand the call is no longer available. And while the warning Santander says was given online warned against unexpected contact about an investment opportunity and about checking a company's details on the FCA's website, I'm not satisfied this was an effective warning. That is, one that was sufficiently impactful or specific as required under the CRM Code. Mr S was not cold called or contacted unexpectedly. He says he carried out checks and took comfort in thinking he was investing through a regulated company. I'm also mindful of the level of sophistication involved in this scam. It's unlikely I'd find Mr S unreasonably ignored an effective warning even if Santander had given evidence to show one was given.

I'm also satisfied Mr S had a reasonable basis for believing the investment was legitimate. I note K provided brochures and certificates which appeared genuine. Mr S says he carried out checks and was reassured as the payment was going through N – a regulated company. He says the payment in dispute was a further investment, after having received an earlier return, which again reassured him about the opportunity. There was nothing in the public

domain at the time about K from which Mr S could have reasonably inferred a scam was taking place. Taking all this into account, I don't think Santander can rely on the reasonable basis for belief exception to reimbursement. As such, Mr S is entitled to a full refund.

It's possible that funds are recovered at a later date through the administrators. In the event, as referred to by the Investigator, Santander is entitled to ask Mr S to sign an indemnity to cover this eventuality. And, in relation to compensatory interest, I think it should be paid from the date Santander declined Ms S's claim under the CRM Code. I'm satisfied enough information was available then for it to have found Mr S had been the victim of a scam.

Putting things right

For the reasons I've given, I uphold this complaint and direct Santander UK Plc to:

- Refund Mr S the disputed payment (minus any returns received)
- Pay 8% simple interest per year on the refund, calculated from the date it made the decision not to reimburse Mr S under the CRM Code until the date of settlement.

To avoid the risk of double recovery Santander UK Plc is entitled to take an assignment of the rights, if it wishes, to all future distributions under the administrative process before paying the award.

My final decision

For the reasons above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 September 2025.

Thomas Cardia
Ombudsman