

The complaint

A company which I'll call 'F' complains that Santander UK Plc ('Santander') didn't reimburse the money it transferred to a fraudster.

The complaint is brought on F's behalf by its director, Mr H.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, in mid-2020 Mr H was introduced to a property investment company which I'll call 'D' and invited to invest in the company. Mr H says he undertook the relevant due diligence on D and was persuaded by the returns of 20% being provided and the projects being invested in.

Mr H signed an agreement with D which meant F would loan funds which would then be used for D's property development projects. The agreement also set out the expected term and returns of the loan. F then transferred the following payments to D's account, £98,000 on 30 October 2020, £2,000 on 31 October 2020, £25,000 on 28 July 2021, and two payments for £50,000 on 11 April 2022. F says it didn't receive any warnings from Santander when it made the payments to D, despite the payments being out of character.

Between December 2020 and June 2021, F received returns of around £1,666 per month, which then increased between January 2022 to August 2022 to around £2,083 per month. F said it received a total return of £26,249.93 and only became aware in late 2022 that D had gone into administration when it was contacted by the administrators. At this point, F became aware that its funds hadn't been invested in property development as agreed but was used to invest in another investment company. F believed that it had been scammed, and its funds had been used fraudulently and as part of a Ponzi scheme.

F complained to Santander as it said the bank had failed in its duty of care to protect it from being scammed when it had made the payment to D. F wanted Santander to refund its losses in line with the Lending Standards Board's ('LSB') Contingent Reimbursement Model ('CRM') Code.

At the time the payments were made, Santander was a signatory of the CRM Code which required firms to reimburse customers who had been the victims of Authorised Push Payment ('APP') scams in all but a limited number of circumstances. Santander says the CRM Code doesn't apply to the payments made by F as they are the subject of a civil dispute and so Santander declined to refund F's payments. It said it had completed an investigation and found no evidence of fraudulent activity regarding the payments made to D, and therefore F needed to contact D directly or report the matter to the police.

Our investigator recommended the complaint be upheld. She thought that Santander should refund F the balance of its loss, which was the £225,000 payments it had made, less the £26,249.93 returns it had received, along with annual interest at 8% simple. She thought that F's funds hadn't been used for the purpose they were intended and therefore F's loss should be considered as an APP scam under the CRM Code, rather than a civil dispute. She also

didn't think that that Santander had provided F with an effective warning before it had made the payments to D, and she was satisfied that F had reasonable basis to believe it was investing legitimately, therefore the bank couldn't rely on these as reasons not to reimburse F's losses.

F accepted the investigator's opinion, but Santander didn't and asked for an ombudsman to review the complaint. The bank said it was reasonable for it not to reimburse F in line with the CRM Code as there was an ongoing police investigation which may impact the outcome of any refund. Santander remained of the opinion that this was a civil dispute between F and D, and that there was no evidence showing where F's funds had been paid after being received by D. It also said that F hadn't selected the correct payment purpose when making the payments and therefore hadn't received the relevant warning for making an investment. As an agreement couldn't be reached, the case was 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.

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 was a voluntary code which required firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances. Santander was a signatory to the CRM Code at the time the payments in dispute were 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 CRM 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 payments here meet the required definition of a scam, then F would be entitled to reimbursement, unless Santander has shown that any of the exceptions as set out in R2(1) of the CRM 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 make a decision on F's complaint, I have to consider whether I can be satisfied on the balance of probabilities, that the available evidence indicates that it's more likely than not that F was the victim of a scam rather than this being a failed or a bad investment.

Has F 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 CRM 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 think the first part of the definition quoted above (DS1(2)(a)(i)) is met in this case. It isn't in dispute that the beneficiary of F's funds was who it intended to pay. But what is in dispute is whether F's payment meets DS1(2)(a)(ii). So, I've then thought about whether F's intended purpose for the payments was legitimate, whether the intended purposes it 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 F has told us, I'm satisfied that it made the payments with the intention of investing in property development. I haven't seen anything to suggest that it didn't think this was a legitimate business opportunity – 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 F became involved with it in late 2020, 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 2020, 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. As our service considers it most likely this other company was operating a scam, this indicates D was too by the time F invested.

I accept F received some returns from D, but as above, our service is 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. This seems consistent in the circumstances of this case whereby F invested a further £25,000 in 2021 and £100,00 in 2022 after receiving returns on its initial £100,000 investment.

However, even if any of F's funds were used for the intended purpose of property development, I'm satisfied that D was, most likely, operating a sophisticated scam. I think it most likely D's purpose for the funds was different to what F understood and intended. And that this was because D intended to dishonestly deceive the company 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 F entitled to a refund under the CRM code?

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like F. 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 CRM Code outlines those exceptions.

One such circumstance might be when a customer has ignored an Effective Warning. A second circumstance in which a firm 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 F's actions – by selecting "paying for a service or invoice", not saying it was making an investment, prevented the bank from giving F a relevant warning. The relevant exception to reimbursement in the CRM Code looks at whether F ignored an Effective Warning. As Santander seems to accept it didn't give F one, even if this was due to the company's actions, it can't fairly then apply this exception.

But in any event, I think even if F had selected the 'investment' option and Santander had given an effective warning about investment scams, I'm not persuaded that would have made a difference here. I say that because due to the sophisticated nature of D, it's unlikely that any warning would have prevented the scam payments being made. And for the exception to reimbursement under the CRM Code to apply, the warning would need to have a material effect on preventing this loss.

Did F have a reasonable basis for belief?

Santander also says that its decision not to refund F under the CRM Code was justified, as the company didn't have a reasonable basis for believing that the payments it made were genuine. But I don't agree. F had initially relied on a recommendation from Mr H's friend, who had invested with D and successfully had their funds returned, to start looking at D as an investment opportunity. F had previously lent to other property investment businesses using a similar investment structure, albeit slightly lower returns, but F's director met other investors in D at investment events and was reassured about the returns from their testimony.

Looking at the wider circumstances here, F's director had undertaken due diligence on D including reviewing its accounts. F's director had also been regularly engaging with D's directors, and had visited their office and existing project locations to see the properties F would be investing in. Furthermore, F had initially received the regular returns it was expecting, which led it to invest additional funds. So, I think F did have reasonable basis for

believing that the payments it was making were genuine and I'm not persuaded by Santander's argument that a CRM Code exception should apply here.

Did F follow its own internal process?

As F is a micro-enterprise, there is an additional exception that could apply which looks at whether F 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 F's internal procedures would've shown that D was operating a scam at the time it was making the payments. 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 CRM Code do apply here, I'm satisfied it should refund the money F lost in full.

Should Santander have done more to protect F?

I've thought about whether these payments were unusual and out of character for F. F's account statements show the largest single payment from its account was for around £50,000. Generally, the largest payments from F's account were around £25,000 and were paid as 'bill payments', so the £98,000 scam payment was much larger and out of character for F's account. Given this was the first payment made to D, I think Santander should have done more here than just displaying a warning, such as contacting F and questioning the payment at the time it was making it.

However, if Santander had done so, I don't think it would have brought the scam to light. I say that because as explained above, F had undertaken its due diligence on D and had reassurances from a third-party about the returns they'd received. So, even if the bank had asked more questions about the first payment, there were no public warnings or alerts about fraud or scams involving D at the time and F would likely have been able to confirm to Santander what the payment was for. This means that the subsequent payments would then have been made to an existing payee and for smaller amounts and likely wouldn't have flagged for further checks by the bank's systems. The relevance of this, is that I don't think Santander could have done more here to prevent the scam and therefore I think the bank should pay F interest on the redress from 15 days after it received the letter of complaint from F, not the date of the payments.

Putting things right

I don't think any intervention I reasonably would've expected Santander to carry out would've prevented F 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 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 F's claim to it – made on 11 July 2024 as evidenced by F's representative – and reimbursed its loss under the CRM Code within 15 days of this. Given that F invested £225,000 with D and received a total return of £26,249.93, I think Santander should refund F £198,750.07 along with annual interest at 8% simple on the refund from 15 days after this date until the date of settlement.

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

- Refund F the £198,750.07 it lost as a result of this scam.

- Pay 8% simple interest per annum on this amount, from 15 days after Santander received F's complaint letter in July 2024 until the date of settlement.

As D is going through insolvency proceedings, it's possible F 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 F as set out above.

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

Jenny Lomax
Ombudsman