

The complaint

Miss A complains that Santander UK Plc refused to reimburse the loss she incurred when she fell victim to what she believes to be an investment scam.

In bringing this complaint Miss A is supported by a professional representative that I'll refer to as 'R'.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In April 2023 Miss A was introduced to an investment opportunity with a company I'll refer to as 'L'. L was offering investors the opportunity to invest in luxury lodge plots, which were being built as part of the wider development of a holiday resort. There were several connected companies involved in the investment, but for simplicity I'll refer to these companies collectively as L.

Investors were told they would receive an annual return of 8% on their investment (paid quarterly), which would be generated from the lodge's rental income, plus 110% of the original investment paid back after five years as part of a compulsory buy-back clause.

Miss A decided to invest jointly in a lodge with her aunt. She made two payments to L from her Santander account, totalling £21,000. She also made other payments from another bank account, which is the subject of another complaint I will consider separately.

Miss A received expected returns between July 2023 and April 2024, totalling £ 6,324.01. However, the next payment was delayed, and then Miss A learned L had gone into administration. She now believes she's been defrauded and that L was operating a scam.

R complained to Santander, on Miss A's behalf. It said Santander should refund Miss A's loss under the Contingent Reimbursement Model ('CRM') Code. Santander acknowledged Miss A's fraud claim but said it was unable to reach a conclusion on her claim as there was an ongoing police investigation, the outcome of which might reasonably inform its decision on whether a reimbursement is due under the CRM code. It explained that under R3(1)(c) of the CRM Code it was entitled to await the outcome of the investigation before making its decision. Unhappy with Santander's response, Miss A referred her complaint to the Financial Ombudsman.

Our Investigator didn't uphold the complaint as he was not persuaded there was sufficient evidence to demonstrate that Miss A had lost money to a scam. As such, he wasn't persuaded Santander was required to reimburse her under the CRM code.

R disagreed and provided further evidence it believed showed L was operating a scam. In particular it highlighted that:

- Administrators considered the scheme had hallmarks of a sophisticated fraud.

- Large sums of investor money had been transferred to companies linked to L and its director and were now unaccounted for.
- Investors had been misled into believing they owned the lodges or the plots on which they stood, which L knew was false.

Our Investigator explained why, despite this, he was not persuaded there was sufficient evidence to conclude L was operating a scam which would require Santander to reimburse Miss A under the CRM Code. He explained:

- The Administrator's investigation was ongoing, and he lacked full information on all companies involved. While there were signs of possible fraud, other explanations—such as poor administration or bad business practice—were equally likely.
- Although sales agents may have misrepresented investors' ownership, there was insufficient evidence that L made dishonest statements or intended to defraud investors.

R maintained that there was already sufficient evidence to demonstrate that L was operating a scam. But it also asked for more time to obtain account statements from a company associated with L to demonstrate how investor funds had been used. The deadline for R to provide further evidence in support of Miss A's complaint has now passed. In the circumstances, taking into account the time both parties have been afforded to provide evidence, I don't think it is appropriate to delay the resolution of this case any further.

The complaint is now with me for decision. Should new material evidence emerge, Miss A may wish to ask Santander to reconsider her CRM claim.

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 have reached the same outcome as our Investigator and for largely the same reasons. I realise this will come as a disappointment to Miss A but based on the evidence that is currently available and for the reasons I'll set out, I don't think Santander is required to reimburse her losses under the CRM Code.

While I recognise the complexity of this case and that further investigations may reveal new information, I must decide on what is known now. I cannot speculate on what other evidence may, if obtained, reveal that could be of relevance to this complaint. But as noted above, should materially new evidence come to light, Miss A can ask Santander to reconsider her claim.

The CRM Code

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

Santander was a signatory to the voluntary CRM Code, which provided additional protection to scam victims while it was in place. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an Authorised Push Payment (APP)

scam (except in limited circumstances). But the CRM code only applies if the definition of an APP scam is met. Here the relevant definition is set out in DS1(2)(a)(ii) of the Code:

*“Authorised Push Payment scam, that is, a transfer of funds...where [...]
(ii) The customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

The CRM Code is explicit that it doesn't apply to “*private civil disputes*”. This would include a failed investment.

I've therefore considered Miss A's purpose in making the payments; L's purpose in receiving them; and if there is a significant difference in these purposes, whether I can be satisfied that this was because of dishonest deception by L.

Miss A intended to invest in a holiday lodge development, on the expectation she would receive quarterly returns and a further 10% return on her investment in year five. I have no reason to doubt that Miss A believed this was a legitimate investment.

While it is clear L failed to deliver what was expected from the investment, available evidence demonstrates that it had begun developing the holiday site; it had, or sought, planning permission for the site and was letting lodges; it had also been paying investor returns for several years before the company encountered some difficulties at which point it continued to engage with investors about its attempts to recover the business. There's therefore a *prima facie* case to say it was a legitimate business that failed rather than a scam.

To reach an alternative conclusion, I would need to see clear compelling evidence which demonstrated that not only was L not acting as investors intended, but that its purpose in doing so was fraudulent.

I accept there are some issues which have understandably caused investors to have concerns about the legitimacy of the investment scheme and the intentions of L when receiving their funds. And while I will address these in further detail below, overall, I am not persuaded there is currently sufficient evidence to say it's more likely than not L's purpose in receiving payments was fraudulent, or that it was operating a scam.

Security of investment

R considers L misrepresented the nature of the investment, such that investors were falsely led to believe they would acquire ownership of the lodge and/or the plot of land on which the lodges sat. R has made the case that investors were therefore falsely induced into the investment believing it was secure, when L knew this was not the case.

Having reviewed the documentation Miss A was provided as part of the investment, I accept there was a lack of clarity about what she specifically obtained as part of the investment. The marketing brochure stated that investment involved the “*purchase of luxury lodge plots*” and I can see Miss A (and her aunt) signed an investment agreement which confirmed she would be provided with “*a lodge plot deed and a certificate of ownership*”. What it means to own a lodge plot does not appear to have been clearly defined. But while there may be some ambiguity in the terms of the agreement, this is not enough to say that L misrepresented the terms of the investment.

R has not demonstrated that the statements L made about the investment were in fact false – i.e. that Miss A does not own a lodge plot (albeit I accept this would not be the same as having a share of the freehold, although I can't see Miss A was told she would). But even if L

had misrepresented Miss A's ownership rights, R has not demonstrated that this was done with fraudulent intent.

There has been no suggestion that Miss A intended to make use of the lodge herself, or that she expected to be able to sell it outside the terms of the compulsory buy-back term of the agreement. Indeed when she asked a question about using the lodge prior to investing she was told that it was not possible due to the rental guarantee, and that the lodge could only be used if booked separately. The marketing brochure also made it clear that the investment did not entitle the investor to personal use of the lodge, and specified that the investor could not sell or exit the investment before the compulsory developer buy-back, which would happen in year five. Ultimately, I'm satisfied that Miss A's purpose in making payments was to earn a return on her investment capital, which would be generated from the development of the holiday lodge site.

As I have set out above, the evidence presented in support of this complaint does not sufficiently demonstrate that L did not intend to develop the site as advertised, with the profits being returned to investors as agreed. As such, I cannot reasonably conclude that L made a fraudulent misrepresentation.

Use of funds

I appreciate there have been questions over how investor funds were used - especially given the development was not completed as expected – and much is still unknown. But in the absence of clear evidence, I cannot safely conclude that investor funds weren't used as intended.

As our Investigator has addressed in some detail, while I appreciate the administrator has raised some concerns that the investment had some hallmarks of a "*possible fraud*", he also made it clear that he did not have a complete picture of where funds had gone or how they were used. He noted the need for a much wider investigation, involving various associated companies, to gain a true understanding of how investor funds were spent. Without all the relevant information the administrator could only speculate about the possibility of fraud. This full information about how investor funds were used is still unavailable, and as such, I am in no better position than the administrator to conclude that it is more likely than not a scam.

Ultimately, Miss A made payments to L as part of a holiday lodge rental investment and the evidence presented to our service doesn't sufficiently demonstrate that L didn't have the intention of carrying out and completing the developments at the time of the payments. Because of this, I'm not satisfied that Miss A's claim meets the CRM Code's definition of an APP scam.

Should Santander have prevented Miss A's loss?

Lastly, I've considered whether Santander should've done any more at the time of the payments to prevent Miss A's loss.

I've not seen evidence to suggest Santander intervened and discussed the payments with Miss A prior to releasing them. But, even if it had discussed the payments with Miss A prior to their release, I'm not persuaded that the information she'd have presented would've suggested that she might be at risk of financial harm such that it needed to provide her with a scam warning. And even if it had, given what was known about L at the time, I'm not persuaded this would have dissuaded Miss A from going ahead with the investment. So, I can't fairly say Santander could've prevented Miss A's loss at the time.

Overall, I'm not persuaded that Miss A has fallen victim to an APP scam, based on the evidence available. I've no doubt that this will be extremely disappointing to Miss A, given the loss she's suffered and the impact it has undoubtedly had on her, but I'm unable to say that Santander are liable to reimburse her loss. Should any material new evidence come to light at a later date, for example from the police or the administrators, Miss A can ask Santander to reconsider her claim. But, as it stands, I can't fairly say it should reimburse her loss under the CRM Code, or for any other reason.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 5 January 2026.

Lisa De Noronha
Ombudsman