

The complaint

Mr H complains that Santander UK Plc hasn't refunded him after he fell victim to an investment scam.

What happened

Mr H was searching for investment opportunities online when he came across a business I'll refer to as "S". S was offering fixed-rate bonds.

Mr H was persuaded to invest £60,000 in S in May 2019, and they sent their funds via an intermediary which I will refer to as "A". They sent a further £20,000 directly to another investment opportunity offered by a company I will refer to as 'L', who shared the same director as S. Mr H sent £20,000 to L for a loan note. He therefore sent £80,000 in total to both 'S' and 'L'. These payments are set out below:

Date	Amount	Payee
20/05/2019	£15,000	S via A
20/05/2019	£15,000	S via A
29/05/2019	£20,000	S via A
29/05/2019	£10,000	S via A
27/12/2019	£20,000	L

Mr H did receive some monthly and annual returns on his investments. These included 24 payments of £225 and two payments of £1,5000 which related to the investment with S. He also received 3 payments of £1,289.29 which related to the investment with L. These returns totalled £12,267.87. However, these returns soon stopped and both L and S became uncontactable before ultimately going into liquidation. Mr H was not able to recover his capital, so he reported the matter to Santander in 2024. Santander didn't offer Mr H a refund of the amount lost and so he brought the complaint to this service.

It has since come to light that S and L were shut down by the Insolvency Service for misleading investors and failing to co-operate with an investigation into the firms' affairs. Furthermore, The Insolvency Service has advised that the Secretary of State has accepted an 8-year disqualification undertaking for the linked director.

Our investigator set out a detailed view explaining why they were satisfied Mr H had been the victim of an APP scam. And why they were satisfied this claim was covered by the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Overall, the investigator thought there was enough persuasive evidence that this was more likely than not a scam. And they thought Mr H had a reasonable basis for believing the investment opportunity was legitimate when he entered into it, so they recommended Santander return 100% of Mr H's overall loss to him plus 8% simple interest.

Santander did not agree with the findings, and they did not think the payments made via A were covered by the CRM Code. This is because A was a legitimate firm regulated by the

Financial Conduct Authority, so they did not think that what happened to the funds after that point were covered under the Code.

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.

I will firstly cover off the initial two payments made to S via A on 20 May 2019. These were made prior to the inception of the CRM Code, which took effect on 28 May 2019 and was not retrospective. So, they do not fall under the protection of the CRM Code. However, I think that due to the value of the payments it would have been reasonable for Santander to have intervened prior to them being processed, to ensure Mr H was not falling victim to financial harm.

If Santander had intervened, I think it is unlikely they would have been able to uncover the scam and prevent Mr H from making further payments. I say this because at that time there was nothing in the public domain about S which either Santander or Mr H could have uncovered had probing questions been asked about the investment. In addition to this, had Santander asked probing questions, Mr H would have been able to provide what appeared to be genuine documentation relating to the investment.

With all of this in mind, I think it is unlikely Santander could have prevented the two payments on 20 May 2019, so I won't be asking the bank to refund them.

The remaining payments were covered by the CRM Code, which Santander is a signatory of. It has therefore agreed to adhere to its principles. The CRM Code requires firms to reimburse victims of APP scams in all but a limited set of circumstances.

Do the payments made to A fall under the provisions of the CRM Code?

The central point of dispute here is whether the additional step of Mr H paying A, before the money was passed to S, means that the provisions of the CRM Code do not apply to the transaction.

The CRM Code does not require the initial recipient of a payment to be an account owned by and for the benefit of the fraudster. Neither does it require that account to be controlled by a party which is complicit in the fraud. Instead, the relevant test is whether an APP scam has taken place. In this case, I think the payment meets the definition of an APP scam under DS1(2)(a)(ii) in that Mr H transferred his funds to another person (A) for what he believed was a legitimate purpose but was in fact fraudulent. Specifically, Mr H believed that he was making a payment as part of a legitimate scheme but, in fact, he was being defrauded.

Should the CRM Code require that the first recipient of funds also be the party that benefits from the fraud, a great many claims would be excluded. For it is the case that many first-generation accounts are not controlled by the fraudster themselves. The use of money

mules (complicit or innocent) is well-known and the CRM Code does not require the sending firm to make an assessment of whether the recipient account holder was complicit in the fraud or not.

Instead, I need to consider whether the funds were effectively under the control of the fraudster at the point they arrived at A.

I've seen evidence that the funds that credited A's account were passed to S within a few days. From what I have seen, it appears A was acting as an agent for S. More importantly, Mr H does not seem to have a customer relationship with A, the funds do not appear to credit an account in his name and he had no significant interactions with it. I'm satisfied A was acting on behalf of S and not Mr H and he had no reasonable way of preventing the onward transfer of funds to S.

It follows then that the money was both out of Mr H's control at the point it arrived at A and effectively under the control of S. Consequently, the circumstances in this case are not significantly different from a typical scam scenario - where funds are transferred into an account which is unlikely to be owned by the fraudster, but the recipient has agreed to pass funds on to an ultimate beneficiary.

That means that the payment Mr H made is capable of being covered by the provisions of the CRM Code.

Were the payments made as the result of and APP scam?

The investigator set out their explanation for making the finding this was an APP scam (and therefore a claim caught by the CRM code) but for clarity I'll repeat the salient points here.

- The director of S and L has been disqualified as a director on Companies House for eight years by the Secretary of State.
- The director had failed to provide liquidators with accounting records for his liquidated businesses and has said he will not be providing these.
- The FCA issued a warning about the linked businesses in March 2020 saying they were providing financial services without authorisation.
- Despite saying S had assets of £34m, it never filed any accounts and wasn't independently audited at any point. There was also a further company that took over S, which also never filed any accounts, and the director was the same person. This company contacted investors to say their money would be safe despite the FCA regulated intermediary going into liquidation, and then it cut contact with all investors.
- Police Scotland are now investigating the director, S and other linked companies.
- In some instances, S' brochures claimed to have agreements in place with Edinburgh City Council to lease local authority properties – ECC have now confirmed to our service that it had no record of any such contract or agreement with S or the director.
- There is no evidence to suggest S or the linked companies were operating legitimately. There is no evidence of any investments made. Some consumers received small monthly returns while others received no returns at all.
- The Insolvency Service has also made comments following its investigation into S and L confirming investors were routinely deceived.

Ultimately there's no evidence which demonstrates that victim's funds were used in the way they were told they would be. So, in the absence of any convincing evidence that S and L were carrying out investments for their investors, I'm persuaded that the payments under

discussion here meet the definition of an APP scam, as per the CRM Code. Santander hasn't provided any persuasive evidence that S or L were operating legitimately.

Because I'm satisfied this is an APP scam and caught by the CRM code, I've gone on to apply the provisions of the Code below.

As I've said, the Code requires firms to reimburse customers who have been the victims of APP scams, in all but a limited number of circumstances. It is for Santander to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

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

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning.
- 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 services; and/or the person or business with whom they transacted was legitimate.

Further exceptions are outlined in the CRM Code but do not apply to this case.

Did Santander meet the standards expected of a firm under the CRM Code?

The CRM code says that, where a firm identifies APP scam risks, it should provide "Effective Warnings" to their customers. It sets out that an Effective Warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so.

In this case, Santander has provided a copy of a 'static warning' it provided to Mr H when he made the initial payments. This said:

Could this be an investment scam?

Anyone cold-calling with investment opportunities are likely to be criminals. If you're suspicious, please stop now. If someone is pressuring you, please stop now.

I appreciate Santander provided a warning, but I have to consider this is a very generalised warning and does not bring to life the kind of scam Mr S was falling victim to. On balance, I do not agree that this meets the definition of an effective warning so I do not think Santander met its obligations under the Code.

Did Mr H have a reasonable basis of belief?

Our Investigator considered that Mr H had made these payments with a reasonable basis for belief that they were legitimate, and Santander has not made any specific arguments to counteract the Investigator's findings. Having reviewed all the evidence, I agree with the findings set out by our Investigator, I say this because:

- Mr H received a call from an introducer, who set out the investment opportunity in S. Mr H was provided with an application form, which appeared to be professional.
- Based on what I know about S from the time, I'm persuaded that the information available about them would've appeared persuasive and convincing.
- I have not found any clear or compelling evidence from the time that would have revealed to Mr H that the investment opportunity was in fact a scam.
- While I have not seen evidence for the payment to L, as this was around seven

months following the initial investment to S and he had been receiving regular returns in that time, I think it is reasonable that he felt a linked investment would also be legitimate.

Overall, for the reasons set out above, I'm not satisfied that Santander can rely on any exception to reimbursement under the CRM code, so I consider that this complaint should be upheld in full.

Putting things right

To resolve this complaint Santander should reimburse Mr H under the provisions of the CRM Code. Santander should compensate Mr H by:

- Refunding his total losses for the final three payments totaling £50,000, minus any returns received.
- It appears Mr H received returns amounting to £12,267.87.
- Pay Mr H compensatory 8% simple interest on the above from the date his complaint was declined under the CRM Code to the date of settlement.

My final decision

I uphold Mr H's complaint in part and recommend Santander UK Plc resolve the complaint by paying the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 March 2026.

Rebecca Norris
Ombudsman