DRN-5933330

The complaint

Ms T complains that Santander UK Plc ('Santander') won't refund all the money she lost to an investment scam.

She's represented by a firm of solicitors. For simplicity, I'll refer to Ms T throughout this decision.

What happened

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

In summary, between October 2021 and March 2022, Ms T paid £8,971 from her Santander account to an investment scheme ('X') which she says was a scam. About £5,920 of that money was first paid to another company ('A') which is understood was linked and operating as a scam in relation to X. The rest of the money (about £3,000) was paid to a personal account of a "family friend" ('D') who was acting as a 'middle-man' or 'introducer'.

In October 2024, Ms T made a claim to Santander. It agreed to reimburse her, under the Contingent Reimbursement Model ('CRM Code'), for all the payments she made directly to A. It didn't refund the payments to D on that same basis because those had been made to someone Ms T knew and it didn't believe D was linked to the scam or intended to scam her.

A complaint was made to Santander and later referred to our Service. Our Investigator didn't uphold it. She noted Santander had repaid all payments to A under the CRM Code. She also assessed payments to D under the CRM Code but concluded exceptions to reimbursement applied, including that Ms T didn't have a reasonable basis for believing the opportunity was legitimate given the risk-free returns it was offering and her apparent lack of due diligence.

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

Informal communication

I attempted to resolve the complaint informally. In summary, I explained:

- Although the Investigator assessed payments to D under the CRM Code, I don't think those particular payments fall in scope. There's no evidence to suggest D intended to scam Ms T or that D was a willing party to the scam orchestrated by X. Ms T has herself said that D was her sister's friend, that she doesn't believe D was involved in the scam, and that D may also have been scammed.

- Outside of the CRM Code, in terms of triggers, all the payments to D were of relatively low value and I don't think there was enough about any of the payments (either to D or A) for Santander to have been concerned that Ms T was at a heightened risk of financial harm from fraud. Even if I were to find Santander ought to have stepped in, on perhaps the largest payment to A (already refunded), I wouldn't have expected this to have gone beyond a written warning. It's not uncommon for customers to make one off larger payments from time to time. And, as referred to by the Investigator, a written warning

was provided at the time based on the payment purpose Ms T had selected.

Ms T (through her representatives) still asked for a decision and responded, in summary:

- Ms T was a victim of APP fraud, regardless of whether D was knowingly complicit. The Code includes scenarios where fraudsters use 'mule accounts' or intermediaries to facilitate scams. The essence of the CRM Code is to place the focus on whether the customer was vulnerable and whether the bank met its responsibilities to prevent foreseeable harm, not whether the third-party receiving funds had fraudulent intent. To exclude a case from the CRM Code purely because the recipient of funds wasn't proven to be a fraudster narrows the Code beyond its intended scope, especially where the customer was misled into transferring money under false pretences.

- While Ms T said she doesn't believe D acted maliciously, she was relying on trust and familial association. That D was receiving large sums of money into their account and passing it on to a scam (intentionally or otherwise) suggests they were facilitating a fraudulent scheme. This strongly resembles a 'money mule' situation, which is routinely considered within the CRM Code. The fact D may also have been scammed doesn't absolve Santander's duty to treat Ms T fairly or reduce the applicability of the Code.

- A total of nearly £9,000 over a period of several months ought to have triggered scrutiny. The CRM Code and broader industry guidance recognise that pattern-based analysis is important, not just isolated transaction values. Ms T was transferring funds to both a known company and an individual's account. This is highly unusual, especially when in connection with an investment opportunity. Santander issued only a generic written warning, despite these being multiple, unusual payments to a personal account and a scam-linked company. There is little evidence that Santander made meaningful enquiry or attempted customer contact to understand the purpose of the transactions.

- Under the Code, Santander should have taken 'reasonable steps to detect and prevent fraud' based on the indicators present. It's been said Ms T didn't have a 'reasonable basis for belief' because of the 'risk-free' returns and lack of due diligence. However, the scheme was sophisticated and widely believed to be legitimate by others. Ms T relied on social proof and personal introductions which are tactics used by fraudsters to build false credibility. It's unreasonable to expect a layperson to identify this deception where even experienced investors have been misled by similar setups. The test under the CRM Code isn't whether Ms T did everything perfectly but whether she acted with reasonable basis for belief, in the context of the scam and her personal circumstances.

- Ms T was the victim of a sophisticated scam. Santander refunded some payments under the CRM Code, which already acknowledges Ms T was defrauded and that she acted with a reasonable basis in part. To deny reimbursement for the remaining payments, based on a narrow technicality around the recipient's intent (where D appears to have been at best a negligent conduit), seems inconsistent with both the intent and spirit of the CRM Code and FOS's own approach to fair and reasonable outcomes.

Provisional decision

I issued my provisional decision on this complaint. I explained why I wasn't minded to uphold it. I provided the following reasons:

It's not in dispute Ms T lost money to X which is now widely accepted was a scam. But that doesn't mean all her payments are necessarily covered under the CRM Code or that

Santander needs to refund them. Under the CRM Code, an APP Scam is defined as one where:

"the customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or the customer transferred the funds to another person for what they believed were legitimate purposes but which were in fact fraudulent".

If a payment doesn't meet that definition of an APP Scam, then I can't fairly expect a signatory to the CRM Code to consider reimbursing the payment under those provisions.

I've considered Ms T's comments in response to what I'd said about D's intentions and what that means for her payments to D being considered under the CRM Code. This includes what she's said about the use of mule accounts. And I think it would help to provide further clarity on what I meant by my reference to D's intent. In the context of this complaint, the CRM Code doesn't require the sending firm to make an assessment of whether the recipient account holder was complicit in the fraud. Instead, I need to consider whether the funds were effectively under the control of the scammer at the point they arrived in D's account.

In this case, there's no suggestion D intended to scam Ms T. In fact, she's told us that D was a "family friend", that she doesn't believe they were involved in the scam, and that D might have been scammed themselves. There's also insufficient evidence for me to conclude that D's role in the transaction was anything more than accepting Ms T's funds and then passing them on. It therefore seems to me that when Ms T transferred money to D, it was still under D's control and so – by virtue of what I've said above about D's role here – under Ms T's control. That control was only lost to X when the money was sent on from D.

As the funds were still in Ms T's control when they were sent to D, the payments to D would not be covered under the provisions of the CRM Code. And as I don't think Ms T's payments to D are covered by the Code, I don't consider it necessary to address her comments about her and Santander's obligations under the Code.

Outside the provisions of the CRM Code, I've again thought carefully if Santander should have stepped in on any of the payments and, if so, whether a proportionate intervention would have likely prevented Ms T's losses. But as Ms T has herself pointed out, the total of nearly £9,000, while not insignificant, was sent over a period of several months. And it was sent across a number of smaller payments. For context, £980 (refunded) was sent in early October 2021; £750 at the end of October 2021; £602 in December 2021; £708 in early January 2022 with a further £4,938 (refunded) at the end of that month. About £990 was sent during February and March 2022.

I'm still not convinced that any of the payments ought to have appeared as significantly concerning in value. The payments were also spread out. I don't agree a suspicious pattern ever developed to the extent that Santander should have intervened on concerns that Ms T was at a heightened risk of fraud. Even if I were to say Santander should have stepped in, on perhaps the largest payment to A (which has been refunded), I think the warnings it has said were given on some payments, including the largest one at the end of January 2022, were proportionate to the risks presented. At that time, Ms T was asked to give a payment reason in the automated payment flow. She selected 'Paying for a Service', even though the option 'Investment' (closely matching her situation) was available for her to choose from. I recognise the warning she was then shown, based on the payment purpose, didn't prevent her making payments, but I don't think that was a result of a failure on Santander's part.

As for Ms T's comments that the payments should have flagged because she was paying a 'scam company' and D in connection with an investment, I've not seen anything to show Ms T told Santander she was sending funds for 'investment'. Without other significant factors, I

don't consider it's 'highly unusual' that payments were made to other entities. I'd also note the payments in question were transfers, Ms T didn't pay X directly, and a notice by the FCA about A hadn't been published at the time.

In terms of recovery, Santander has already reimbursed Ms T's payments to A, under the CRM Code. In relation to the payments to D, I'm satisfied it contacted the receiving firms once the scam was reported but recovery was unsuccessful. In the circumstances, I don't think Santander could or should have done anything more.

Responses to provisional decision

I invited further comments and evidence from both parties. I said that, unless the new information changes my mind, my final decision would likely be along the lines set out in my provisional decision. Santander had nothing further to add. In summary, Ms T responded:

- The payments to D fall within' the scope of the CRM Code, Santander failed to take reasonable steps to detect and prevent the scam, and the provisional reasoning concerning "control" and responsibility does not align with the spirit or intent of the Code.

- The Code defines an APP scam as one where a customer transfers funds to another person for what they believe to be legitimate purposes but which are in fact fraudulent. The Code doesn't require that the recipient account holder be knowingly complicit in the fraud. What matters is that the customer was deceived into making the payment. Ms T was induced by fraudulent misrepresentation to send money to D on the understanding that D was acting as an intermediary for a legitimate investment scheme. D's role was to receive Ms T's funds and pass them on. This scenario is comparable to that of a money mule, which the CRM Code expressly contemplates as falling within its scope.

- The provisional decision suggests that because D may not have intended to scam Ms T, the funds were still under Ms T's control. This applies an overly literal interpretation of "control." Once Ms T transferred the money to D under false pretences, she lost any meaningful ability to control or recall those funds. D acted as a conduit for the fraudsters, and Ms T's funds were irretrievably diverted as a direct consequence of deception. To say Ms T retained control merely because the intermediary wasn't proven to be complicit would create an artificial distinction that excludes many forms of intermediary or mule-facilitated fraud from the protection the CRM Code was designed to provide. The Code's purpose is to protect consumers who are tricked into authorising payments for fraudulent reasons, regardless of the exact path those funds take before reaching the fraudsters.

- Santander failed to meet its obligations to detect and prevent the scam. Ms T made a series of payments to both a corporate entity and a personal account, all linked to what she believed was an investment. This pattern of multiple transactions to mixed recipients is a well-recognised red flag for APP fraud. Santander should have recognised this unusual pattern of behaviour. It relied heavily on Ms T's self-selected payment purpose of "Paying for a Service" in its automated payment flow. However, it's unreasonable to expect an ordinary customer to appreciate the significance of this categorisation or to expect that such a selection would affect the safeguards available. A generic on-screen warning was insufficient in circumstances where repeated payments were being made to a personal account in connection with an investment. The bank's obligations under the CRM Code go beyond issuing automated prompts. Given the nature of the payments and the indicators of investment fraud, Santander's response fell short of this standard.

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've decided not to uphold it for similar reasons as previously given.

I note Ms T has again said she sent her money as a result of fraudulent representation. And I've again considered her comments around money mule scenarios that may fall under the provision of the CRM Code. To repeat, it's not in dispute that Ms T lost money to X which is widely accepted was operating a scam. But I don't agree with her suggestion that all that matters is that she was deceived into making the payments and that protection under the CRM Code applies regardless of the exact path the funds take before reaching the fraudster. Not all APP scam payments are covered by the CRM Code. For example, there are various circumstances where the CRM Code won't apply, set out in sections of the Code, including DS2(1):

"This Code applies to Customers undertaking Payment Journeys as defined in DS1(2)(k):

(a) between GBP-denominated UK-domiciled accounts, by any channel of push payment available to the Customer, such as in branch, on the phone, or online.
(b) to the point of the first reception of funds in an account held by a receiving Firm (the first generation account). Firms whose accounts are utilised in the onward transmission of APP scam funds are out of scope."

Where Payment Journey has a specific definition given at DS1(2)(k):

"The process of bringing about an authorised payment, as defined in DS1(2)(a), including initiation of a payment order, adding a new, or amending an existing payee, all acts taken by the Customer to authorise execution of the payment, ending with the initial reception of the transaction funds in a payee account."

In this case, in relation to the funds in dispute, there are two distinct payment journeys – the first is Ms T to D. The second is from D to the scam. From DS2(1)(b) above, the CRM Code applies to payment journeys *"to the point of first reception in an account held by a receiving Firm (the first generation account)".* As before, there's no suggestion that D intended to scam Ms T. She's told us D was a *"family friend*", that she doesn't believe they were involved in the scam, and that D might have been scammed themselves. She's said that D's role was to receive her funds and pass them on.

I've seen nothing to show there was a mismatch in purposes between Ms T and D in relation to that payment journey. I've also seen nothing to show Ms T lost control of her funds to the scammer when they reached D. As such, my view that Ms T's payments to D aren't covered by the provisions of the CRM Code remains unchanged. I still therefore don't consider it's necessary for me to address her comments around her and Santander's obligations under the CRM Code.

Outside the provisions of the CRM Code, I'm still not convinced any of the payments ought to have triggered an intervention for the reasons previously given. They were spread out over several months. I don't agree they should have flagged as significantly concerning in value, or flagged as suspicious considering the information Santander would have had available about the payees at the time, or that a suspicious pattern ever developed to the point that Santander should have intervened on concerns of a heightened risk of fraud.

I also explained that, even if I were to conclude that Santander should have stepped in on, for example, the highest payment to A, I wouldn't have expected it to have gone beyond the warnings it has said it provided, based on the payment purpose selected. And even if Ms T was guided on which payment purpose to select, which in turn led to her receiving warnings

that didn't resonate, I still don't think it'd be reasonable for me to find that was the result of a failure on Santander's part – particularly when I'm not convinced it needed to intervene at all.

In summary, Santander has already refunded Ms T's payments to A under the CRM Code. I don't think that her payments to D are covered under those provisions. Outside of the CRM Code, I don't think any of her payments should have otherwise triggered an intervention. I'm satisfied that, when Santander did intervene, it took proportionate steps to provide a warning based on the payments purpose selected. And in terms of recovery, I'm satisfied it contacted the receiving firms once the scam was reported. Although this proved unsuccessful, I don't think Santander could or should have done anything more.

My final decision

For the reasons I've given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 15 December 2025.

Thomas Cardia
Ombudsman