

## **The complaint**

Mr and Mrs S complaint that Santander UK Plc won't reimburse them after they sent funds towards an investment, that they now consider to have been a scam.

## **What happened**

Mr and Mrs S have explained that in March 2023, they were researching physical gold online and received a phone call from a company I'll refer to as 'G'. Mr and Mrs S were told that G sold gold on behalf of a second company I'll refer to as 'T', and that Mr and Mrs S could purchase gold in the form of a 'forward contract', where their gold would be purchased at a discount and provided to them two years later. After further researching the opportunity online, Mr and Mrs S decided to proceed with G and made faster payments totalling £21,497.11. A few months later, Mr and Mrs S were advised that the cost of gold had dropped and now was a good time to purchase, so Mr and Mrs S made a further payment of £20,317.18.

In 2024, Mr and Mrs S were advised by other investors that T had operated a scam in another country and had now done the same in the UK. Believing they were the victims of a scam, Mr and Mrs S contacted their bank, Santander, to raise a claim. Santander considered their claim but didn't uphold it, as they said this was a civil matter between Mr and Mrs S and G/T. Santander said that it's aware that T has entered into a Company Voluntary Arrangement (CVA) where repayment plans have been agreed on expired investment contracts, that the scam in another country referred to was closed as a civil matter and that UK police have also confirmed this to be civil.

Mr and Mrs S remained unhappy and referred their complaint to our service. They said Santander had been inconsistent among its customers in its consideration of whether T was a legitimate firm or a scam, and that no safeguarding was in place when customers were sending funds to an account that was frozen, or after the company was insolvent.

An Investigator considered Mr and Mrs S' complaint but didn't uphold it. She didn't think there was enough evidence to conclude that T was a scam, rather than a legitimate business that had failed. Mr and Mrs S disagreed with the Investigator's view, providing further evidence that they considered supported that this was in fact a scam. The complaint has therefore been referred 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.

I want to start by saying I'm very sorry to hear of the situation Mr and Mrs S have been left in – I understand the loss of invested funds has had a significant impact, not just financially, but emotionally too - and while I'm not recommending Santander reimburses them, I don't wish for this to downplay or diminish the impact these events must have nevertheless had on them.

I'm also aware that I've summarised this complaint and the responses briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focused on what I think is the heart of the matter here – which is to determine whether there is sufficient evidence to conclude that a scam has taken place (and in any event, whether Santander should be liable for any losses). If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Based on everything I've seen, it seems hard to argue other than that T has breached its contract with Mr and Mrs S. But I'm not deciding a dispute between Mr and Mrs S and T – I don't have the power to look into a complaint about T. My role is limited to deciding the dispute between Mr and Mrs S and Santander.

As a starting point in law, Mr and Mrs S are responsible for payments they have instructed Santander to make. Unfortunately, there's little protection available to them for bank transfers like these were.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) did provide some protection to victims of APP scams during its inception. But it specifically excluded private civil disputes, such as where a Customer *'has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier.'*

In order to determine that Santander is responsible for Mr and Mrs S' losses and for it to refund them, I'd therefore first need to be satisfied, based on the available evidence, that the losses they have incurred were the result of a scam. This would mean determining that T's reason for procuring the payments was fraudulent and that T had criminal intent at the time it received their funds. This is, understandably, a high bar to meet. And while I don't dispute that it's a possibility that this is what happened here, based on everything I've seen, I don't think there is currently enough evidence to support this claim. I've explained why in more detail below.

I'd first like to acknowledge that I understand Mr and Mrs S feel very strongly about their complaint and have raised a number of specific points. As mentioned, I don't intend to cover each of these individually, as my role is to determine whether, *overall*, the evidence leads me to conclude that a scam has taken place. However, Mr and Mrs S are understandably frustrated that there is a lack of consistency within Santander and across the banking sector regarding how complaints against T are being resolved. While I can appreciate this frustration, I'm afraid I'm not able to comment on how banks choose to respond to complaints as a whole, I can only look at the complaint I've been asked to reach a determination on.

Having considered Mr and Mrs S' complaint, I understand Mr and Mrs S understood they were paying toward a forward purchase of gold. I appreciate they feel misled about this element of the contract and how the gold would be obtained, but in any event, the gold they were promised (or the equivalent funds) hasn't materialised. However, my role is to consider whether, when T obtained Mr and Mrs S' funds, they did so with criminal intent, and with no intention of ever fulfilling the agreement.

I understand Mr and Mrs S feel this is the case and have provided detailed evidence to support their stance. However, in order to reach the same conclusion, I'd need to be persuaded that T failing to fulfil its contract can't also be accounted for by other reasonable explanations.

In this case, I'm mindful that it doesn't appear in dispute that mining operations *have* been taking place by T. We've seen evidence that supports that T had the infrastructure and equipment required to mine, which supports the notion that, despite failure to fulfil contracts, T had invested money in resources to obtain the gold.

I understand Mr and Mrs S consider T was in financial difficulty before obtaining funds from them. But it's not fraudulent to continue running a business when experiencing financial difficulty. What I'd need to be persuaded on is that T accepted Mr and Mrs S' funds knowing it didn't, or wouldn't, have the capacity to meet its obligations under the contract and I don't consider there is sufficient evidence to support this.

Since becoming insolvent, I've not seen any evidence from the Insolvency Practitioners that suggests they have concerns that T was trading illegitimately, or running a Ponzi scheme. I understand a Company Voluntary Agreement is now in place, with the aim to provide investors with at least some returns. While investors are still awaiting returns, my understanding is that the mining process is still ongoing.

I understand that the Police has ceased its investigations due to resourcing, although a case may be proceeding abroad against T's escrow account. While law enforcement involvement can be an indication of criminal activity, it cannot be concluded on proceedings alone that a criminal act has taken place.

In essence, while Mr and Mrs S have said that the key issue here is not whether T was a genuine business at some point, but instead whether they were misled about the products and risks involved, I disagree. Being misrepresented a product doesn't demonstrate good business practice, but it's not what can be considered a scam under the CRM Code. The test here is the intent of T at the time the payments were obtained, and it is this point that I have insufficient evidence on to conclude that T was acting with criminal intent.

Therefore, having considered all of Mr and Mrs S' points and having considered the complaint holistically, while I'm very sorry to disappoint them, I don't think there is currently enough evidence to determine that Mr and Mrs S have been the victims of a scam, against the alternative explanation that T was a legitimate business that failed following financial difficulty. However, if any new evidence does come to light as a result of Police investigations, Mr and Mrs S can contact Santander to consider this new evidence.

That means that I can't fairly hold Santander responsible for the losses suffered here. It also means I find Santander had no ability or obligation to prevent Mr and Mrs S' payments from being made, or to attempt to recover their money.

**My final decision**

My final decision is that I don't uphold Mr and Mrs S' complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 13 April 2026.

Kirsty Upton  
**Ombudsman**