

## **The complaint**

Ms G complains about Santander UK Plc.

She says that Santander won't refund her the money she lost to an investment which turned out to be a scam.

## **What happened**

Ms G was introduced to a company I will refer to as 'STTB' which was managing investments in Forex trading. Her husband had already invested in the same company and was impressed by the returns he believed he had received.

Ms G spoke with the director of STTB and was impressed with what he told her and his knowledge around the investment and decided to go ahead. In 2021, Ms S made three payments to STTB, totalling £50,000.

In June 2022, Ms G became aware that there were issues with STTB and believed she had been scammed and reported this to Santander in July 2022.

As of yet, Santander hasn't issued an outcome on her complaint due to an ongoing police investigation into STTB. It said that it was unable to make a decision on whether STTB was operating as a scam or not, and therefore couldn't be sure if Ms G's complaint was covered under the Lending Standards Board's Contingent Reimbursement Model (the CRM Code), which Santander has signed up to.

Ms G then brought her complaint to this Service, and our Investigator looked into things. They were satisfied that S was a scam – and felt that Santander should reimburse her.

Santander did not accept this, and asked for an Ombudsman to make a final decision, so the complaint has been passed to me.

## **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.

It's important to highlight that with cases like this, in deciding whether there was in fact a scam, I need to weigh up the available evidence and make my decision about what I think is likely to have happened on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the relevant time.

In broad terms, the starting position in law is that a firm 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 as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Santander is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the CRM Code where they have been the victim of an authorised push payment (APP) scam – as defined within the CRM Code. So, if I am not persuaded that there was a scam then I will not have a basis to uphold the complaint.

*Is there any reason to delay making a decision?*

I understand that Santander has asked for a delay in deciding Ms G's complaint. I am aware there is an ongoing investigation, and there may be circumstances and cases where it is appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence already available. And I am conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I am required to apply (which is the balance of probabilities).

The Lending Standards Board has said that the CRM Code does not 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 determine Ms G's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that Ms G was the victim of a scam rather than a failed investment.

I've reminded myself that Parliament has given ombudsmen the job of determining complaints quickly and with minimum formality. In view of this, I think that it would not be appropriate to wait to decide Ms G's complaint unless there is a reasonable basis to suggest that the outcome of any external investigation may have a material impact on my decision over and above the evidence that is already available.

Santander has not clearly articulated whether it considers this may be the case. It's not clear if Santander is concerned that any investigation and subsequent court action regarding STTB's actions may lead to Ms G being compensated twice for the same loss, i.e. by Santander and by the courts. I don't know how likely it is that any funds will be recovered as part of those proceedings. But I agree that, if Santander has already paid a refund, it would not be fair or reasonable for those recovered funds to be returned to Ms G as well. Santander can ask Ms G to undertake to transfer to it any rights she may have to recovery elsewhere, so I'm not persuaded that this is a reasonable barrier to it reimbursing her in line with the CRM Code's provisions.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the police investigation or potential related court case for me to reach a fair and reasonable decision.

*Has Ms G been the victim of a scam, as defined in the CRM Code?*

The relevant definition of a scam in accordance with the CRM Code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it doesn't cover a genuine investment or a genuine business that subsequently failed.

Therefore, in order to determine whether Ms G has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose she intended for the payments was legitimate, whether the purposes she and STTB intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of STTB.

From what I've seen and what Ms G has told us, I'm satisfied she made the payments with the intention of investing in forex trading. She thought his funds would be used by STTB to trade and that he would receive returns on her investment.

But I think the evidence I've seen suggests STTB didn't intend to act in line with the purpose for the payments it had agreed with Ms G.

In this case, I can't see that any of the funds Ms G paid to STTB were invested into any kind of forex investment and note that STTB's account was later closed by the beneficiary bank.

STTB and its linked companies were not authorised by the FCA to carry out trading, so its operations clearly lacked an important element of legitimacy; it was required to be authorised to do the activity it was carrying out and it wasn't. It went so far as to lie to some potential investors (including Ms G) about it being in the process of getting FCA authorisation whilst it was 'trading' – the FCA doesn't allow businesses to carry on regulated activities without being authorised, so STTB wasn't being honest with potential investors.

Further concerns centre around the owner of STTB (who was bankrupt at the time). From the paperwork provided to consumers, he appears to have "personally guaranteed" the investments (despite forex being a high-risk investment and him never being in a financial position to do so). He also signed contracts on behalf of STTB despite not officially being listed as the director of the business. He appears to have acted as a 'shadow director' when he would've been disqualified as a director in his own right due to his bankruptcy. Furthermore, STTB was listed as an 'IT consultancy' business on Companies' House and not a financial services firm.

So based on the above, along with the weight of testimony we have seen from other consumers who invested in STTB, I am satisfied that it is more likely STTB was not acting legitimately, since its intentions did not align with Ms G's intentions, and I am satisfied that STTB was dishonest in this regard. It follows that I'm satisfied Ms G was the victim of a scam.

*Is Ms G 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 Ms G. 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 Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning. A second circumstance in which a bank might decline a refund is, if it can be demonstrated

that: In all the circumstances at the time of the payment, in particular the characteristics of the customer and the complexity and sophistication of the APP scam, the customer made the 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

There are further exceptions within the CRM Code, but they do not apply in this case.

The CRM Code also outlines the standards a firm is expected to meet. And it says that when assessing whether the firm has met those standards, consideration must be given to whether compliance with those standards would have had a material effect on preventing the APP scam that took place.

Under the Code, where the business fails to meet the required standards, but the customer doesn't have a reasonable belief, the business is expected to pay 50% of the redress.

I am also mindful that when Ms G made her payments, Santander should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before it processed a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Santander hasn't argued that Ms G ignored an effective warning when making her payments, so I am satisfied that it cannot rely on this exception to reimburse on this basis.

Therefore, the only thing left for me to address is if Ms G had a reasonable basis for belief that the investment was a genuine one.

Having considered this very carefully, I am satisfied that Ms G *did* have a reasonable basis for belief in STTB. I'll explain why.

Ms G was a neighbour of the owner of STTB and had a relationship going back quite a few years before she made her investment – her husband had also already invested in STTB and seemed to be doing well out of the investment – as were other neighbours.

I am also aware that the owner of STTB introduced the idea of investing to Ms G and her husband over a period of time, rather than them making a rash choice to invest their funds. In effect, Ms G and her husband were groomed – and I can see why Ms G would not have considered that a well-known neighbour of a number of years would set out to deceive her and her husband so callously.

I am also aware that Ms G's husband questioned the owner of STTB about his bankruptcy and was given a plausible explanation as to why this was not concerning at the time (although in hindsight it clearly was).

I have taken into account that the returns promised to Ms G were high – but I don't think that this alone is enough to have caused her concern. Ms G's husband (and other neighbours) already appeared to have been doing well from the investment, and Ms G was not an experienced investor – and as she knew the owner of STTB well, I don't think that this would have caused her much concern at the time. And while Santander has said that had Ms G checked the FCA website, she would have seen that STTB was not authorised, as I have

said above, the owner lied about being in the process of getting FCA authorisation whilst it was 'trading'.

And finally, while STTB may have been registered on Companies House as an IT consultancy, I think that Ms G would have taken comfort that the business was registered on a government website, rather than question what kind of business it was registered as.

### **Putting things right**

Santander UK Plc should refund Ms G's losses in full.

On top of this, it should also pay 8% simple interest on this loss from the date the claim was declined under the CRM code until settlement (less any lawfully deductible tax).

### **My final decision**

I uphold this complaint, Santander UK Plc should put things right as set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 15 May 2025.

Claire Pugh  
**Ombudsman**