

## The complaint

Ms V is unhappy that Starling Bank Limited has decided not to refund her after she says she was the victim of an Authorised Push Payment “APP” scam.

## What happened

Ms V says she was looking for a franchise opportunity, using a website that specifically advertised franchises. She found T and decided to invest.

Ms V’s representatives have added that Ms V was a customer of one of T’s franchises so was aware of the brand. She researched T and the brand and found it had over 15 franchises across the UK, with a legitimate looking website.

Correspondence between Ms V, her family members, and the managing director at T, show there were discussions about asset finance, bank funding, and finding a suitable franchise location.

Ms V says she met with the managing director of T. She signed contracts to take over a franchise and paid a franchise fee of £21,000. She was due to receive contact a few months later to arrange a premises but was not able to reach the managing director. She reported the matter as a scam to Starling.

Starling decided not to refund Ms V. It said Ms V’s claim was not covered by the Contingent Reimbursement Model (CRM) Code as the matter was a civil dispute. It went on to say it had no reason to believe the instructions weren’t genuine. And it had no obligation to intervene or prevent the payment or investigate the recipient.

One of our investigators looked into the matter. She concluded it was a private civil dispute and didn’t recommend that Starling refund Ms V’s losses.

Ms V’s representatives disagreed with the investigators opinion. In summary it said:

- T took Ms V’s money and didn’t take any further action and didn’t respond when contacted after this. This shows T had no intention of delivering what was promised.
- There are numerous other victims who invested around the same time and didn’t receive anything.
- The company went into liquidation a few months after Ms V’s payment, and was potentially insolvent at the time entering into a contractual agreement with Ms V.
- Its suspicious T would take Ms V’s (and others) money so close to a voluntary winding up. The administrator will need to look into this and report on any potential fraud.
- Ms V is not listed as a creditor on the published insolvency paperwork.
- It also looked at T’s published accounts on Companies House. Saying T owed money to linked companies and this seems improper – which will be investigated by the Administrator.

- The complaint needs a deeper investigation and cannot be closed as a civil dispute without the Administrator looking into all of the companies.

The investigator considered these further points but concluded there were no convictions for fraud against T and its directors. And she'd not seen any evidence to make a finding, on balance, that T had intended to defraud Ms V. If further evidence became available this could be considered under a new complaint but she was satisfied this was a civil dispute.

Ms V's representatives asked for 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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

It isn't in dispute that Ms V authorised the payment that left her account. The starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transaction. But she says that she has been the victim of an APP scam and that T's intent from the start was to deceive her.

Starling is a signatory to the voluntary CRM Code. This is a scheme through which victims of APP fraud can sometimes receive reimbursement from the banks involved. But the CRM code does not apply to "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."

It's important to note that I am not deciding a dispute between Ms V and T – I don't have the power to look into a complaint about T. My role is limited to deciding the dispute between Ms V and Starling. So, I need to decide whether Starling acted fairly, when concluding that this amounted to a civil dispute and not an APP scam. I'm satisfied that it did and I'll explain why below.

In order to be persuaded on balance that Ms V has been the victim of an APP scam I need to look to the definitions set out in the CRM code. At

#### *DS1(2)*

*(a) APP Scam Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, where:*

*(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person;*

*or*

*(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

And the FCA handbook glossary which says

***A transferred funds to B for what they believed were legitimate purposes but which were in fact fraudulent***

Looking to these definitions I firstly need to consider the purpose of the payment and whether Ms V thought this purpose was legitimate. Which I'm satisfied she did.

Then I need to consider the purpose the recipient had in mind at the time of the payments and whether this was broadly in line with what Ms V understood to be the purpose of the payment.

T was incorporated in 2015. It had a number of franchises that opened across the country and operated successfully for a number of years. T is currently in liquidation, as of late 2023. T's statement of affairs has been published on Companies House. With all of this in mind there doesn't appear to be any doubt that this was a legitimate business, at least at some point. Although T is now in liquidation and some investors/creditors didn't receive what they paid for, or their contracts were not fulfilled, this does not evidence that T intended to defraud when taking payments or that purposes for the payments were anything other than was agreed. Given T's apparent genuine status, I would need to see convincing evidence that T was more than a failed business to be satisfied that Ms V was the victim of an APP scam.

I appreciate that Ms V paid T a sum and didn't receive what she expected in return. But non-receipt of the goods or services, in and of itself, does not automatically mean she has been the victim of an APP scam.

Ms V's representatives have cited various account movements as being suspicious and not those of a genuine company. But this doesn't persuade me there is convincing evidence that Ms V has been the victim of an APP scam.

Ms V's representatives have cited that the Administrators report would likely reveal fraud or wrongdoing by T and its directors. In some instances that may be the case but there's no guarantee the Administrators report would lead to a clear finding that Ms V was the victim of an APP scam. And I cannot keep the complaint open for an indefinite period of time, whilst the finances of T are considered. It's my role to review if Starling considered Ms V's scam claim, correctly under the CRM code, at the point it was raised. And I'm satisfied that it did. I've seen no persuasive evidence that Ms V was the victim of an APP scam.

If new material information comes to light at a later date, then Ms V can bring a new complaint to Starling. But I'm satisfied, based on the available evidence to date, that I have seen and been presented with by all parties, that this is a civil dispute. And Starling's decision under the CRM code was therefore correct.

As Starling didn't need to consider this as an APP scam then it didn't need to go on to contact the recipient account provider. It didn't need to intervene with the payment either, and even if it had I don't think it would have made a difference given that T was a genuinely operating business at the time Ms V made the payment.

I've seen no other reason to make an award for redress, and I'm satisfied that Starling Bank correctly considered Ms V's claim.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms V to accept or reject my decision before 9 April 2024.

Sophia Smith

**Ombudsman**