

The complaint

Ms G is unhappy after she fell victim to an investment scam and Santander UK Plc has decided not to refund her.

What happened

Ms G found an investment opportunity online and was called by a financial consultant. She was persuaded to invest with S, which was offering an ISA wrapped bond with 9% interest per annum.

She made two payments totalling £13,000 and received returns of £1,064.45 but was unable to withdraw her funds. She thought she'd been the victim of a scam and raised a claim with her bank – Santander.

Ms G's payments were made through an intermediary, I'll refer to that intermediary as N. N was an FCA authorised firm until it went into liquidation.

Santander said it had no reason to be concerned about the payments at the time Ms G authorised them. It went on to say this was not considered as an authorised push payment (APP) scam as there was no element of social engineering involved and it deemed the matter a civil dispute.

It has since come to light that S (as well as another company – linked by its director) were shut down by the Insolvency Service for misleading investors and failing to co-operate with an investigation into the firms' affairs.

Another company linked to S (again by its director) has an FCA warning issued against it. And the Insolvency Service advised that the secretary of state has accepted an 8-year disqualification undertaking for the linked director.

The investigator set out a detailed view explaining why she was satisfied Ms G had been the victim of an APP scam. And she was also satisfied that her claim was covered by the CRM code.

I've been in touch with Santander prior to issuing this final decision to explain why I'm satisfied, Ms G's scam claim is covered by the CRM code. I've contacted Santander twice to explain my rationale but it has failed to engage in those responses or acknowledge that this particular scam claim is covered by the CRM code. And so, I've had to go on to issue a formal final decision on the matter to be able to resolve the matter for Ms G.

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 come to the same conclusions as the investigator and those set out in my informal communications to Santander. I'll set out my findings in full below.

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.

Santander is a signatory of the Lending Standard Board's Contingent Reimbursement Model Code (the LSB's CRM Code). And has therefore adhered to agree to its principles. The CRM Code requires firms to reimburse victims of APP Scams in all but a limited set of circumstances.

The investigator set out her 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 has been disqualified as a director on Companies House for eight years, by the secretary of state.
- The director has failed to provide liquidators with accounting records for several of his companies and has said he will not be providing these.
- The FCA issued a warning about a company linked to S and with the same director, in March 2020, saying it was 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. The company that took over S also never filed any accounts.
- This company contacted investors to say their money would be safe despite N going into liquidation and then cut contact with all investors.
- In some instances, S's brochures claimed to have agreements in place with councils to lease local authority properties – one particular council has now confirmed to our service that it had no record of any such contract or agreement with S or its director.
- There is no evidence to suggest S was operating as legitimate company. There is no evidence of any investments made. Some consumers received small monthly returns while others received no returns at all.
- The lack of co-operation by the director with the liquidators and the disqualification of the director persuade me that the inducement of payment by the victims was as a result of the director and his businesses dishonest deception.

In the absence of any convincing evidence that S was carrying out investments for the victims, I believe that the payments meet the definition of an APP scam, as per the CRM Code.

I've asked Santander if it has any evidence that S was operating legitimately and it hasn't provided any.

On going investigations into S and its directors

Whilst there is an on-going Police investigation Santander has already given an outcome under the CRM code so it cannot apply the R31c provision to delay giving an outcome under the code.

However, there is no need to delay a decision if all parties agree this is a scam. Santander hasn't provided an explanation why awaiting the police investigation would reasonably inform an outcome under the CRM code. A Police investigation and decision to charge will be based on a criminal burden of proof. That may well take many months or years to decide, or may not happen at all. In this case I'm deciding if Santander, under the voluntary CRM code, is liable to refund the consumer where it's more likely than not, that the consumer was the victim of an APP scam. I appreciate a Police investigation may reveal more detail but as I'm of the opinion that it is not in question that this was a scam, then that isn't necessary in

this particular instance. There is enough evidence here that on balance Ms G was more likely the victim of an APP scam than not.

Involvement of N

The involvement of a genuine intermediary (here N) does not exclude the possibility of the CRM code applying. Here I'm persuaded the funds were under the control of the fraudster at the point they arrived at the intermediary (N). The Ms G does not appear to have a customer relationship with the intermediary. And I'm satisfied that the intermediary (N) was acting on behalf of S and not the consumer. The money was out of the consumers control and so the payments made here are capable of being covered by the provisions of the CRM Code. Santander has argued that Ms G should raise a claim against N. But as I've explained Ms G had no relationship with N, it did not hold her money – I'm satisfied the funds were passed on from N to S. So, I do not agree that Ms G's complaint is with N rather than a claim under the CRM code with Santander – her bank.

Consumers have also been issued with letters from the FSCS to explain they must first claim under the CRM code with their bank before and any claim by the FSCS would be considered.

Application of the CRM code to the facts of this case

As 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.

The Lending Standards Board' Contingent Reimbursement Model (the CRM Code) requires firms to reimburse customers who have been the victims of APP scams, in all but a limited number of circumstances and 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 CRM 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 outlined in the CRM Code 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. And it says that, as a minimum, an Effective Warning should be understandable, clear, impactful, timely and specific.

I'm satisfied given the value of both payments of £10,000 and £3,000 on the 23 June and 02 October 2020 respectively, that Santander ought to have identified Ms G could be at risk of an APP scam and provided effective warnings in line with the firms' standards under the CRM code.

Santander's records show that it provided new payee warnings and an investment warning. However, I don't think the investment scam warning is effective. The warning doesn't go into enough detail, and it doesn't explain the consequences. The warning doesn't talk about cloned firms, returns or any other warning signs. And it isn't specific about what should be checked on the FCA website.

Overall, I'm not satisfied Santander met the firms' standards as per the CRM code.

Did the consumer have a reasonable basis of belief?

Santander has not provided any argument that Ms G lacked a reasonable basis of belief when making these payments. And I agree with the investigators findings that Ms G did have a reasonable basis of belief and I have set out those reasons below.

- The funds were being sent to an FCA-regulated company - N - which was receiving funds on behalf of S.
- Ms G was presented with links, brochures and details regarding the investment, this was detailed in content and looked professional which is what you would expect from a genuine investment company.
- I have not found any clear or compelling evidence at the time that would have revealed to Ms G that the investment opportunity was in fact a scam.
- Ms G was advised that she would receive 9% interest per annum. While this was a high rate of return, it isn't so large that it was obviously too good to be true.

Trouble and upset

Ms G has requested £1,000 in compensation due to the trouble and upset caused in the pursuit of the complaint and poor service by the bank. The investigator dealt with this in her view and did not recommend that compensation was due. At the time of her issuing her view, Ms G and her representative accepted the investigators recommendations. And I so I do not need to comment on this further as this matter is resolved. But I'd add that I agree with her findings that the distress and inconvenience caused here was by the scammers. My direction to uphold the complaint does not automatically warrant compensation and I've been provided with no further detail or explanation why Santander caused Ms G distress and inconvenience in the review of her claim here.

Putting things right

Overall, and for the reasons set out above, I'm satisfied that Santander should've reimbursed Ms G under the provisions of the CRM Code. And, in those circumstances, I direct Santander to now fairly and reasonably compensate Ms G by:

- Reimbursing Ms G, the loss she incurred as result of this scam – which is agreed as being £11,935.55.
- Paying 8% simple interest per year on the above amount from the date of the claim being declined to the date of settlement.

My final decision

I uphold Ms G's complaint against Santander UK Plc and direct it to settle the complaint as I've 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 4 March 2025.

Sophia Smith
Ombudsman