

The complaint

Mr S complains that Santander UK Plc hasn't refunded him after he paid money for a mini digger that turned out to have been a scam.

What happened

In June 2022, Mr S was looking to buy a mini digger. His friend found one advertised for sale on a social media platform and let Mr S know.

Mr S says he initially wasn't keen but received a message from the seller saying the friend had passed on his details. Mr S says he then spoke to the seller and decided to buy the machine. While he no longer has a copy of the advert, it showed pictures of the digger.

When Mr S asked to see the machine in person, he was told that wasn't possible. He was told the machine was out on-site but would be ready to send to him a couple of days. It was agreed he'd pay £2,750 plus £150 for delivery.

Mr S says the price was lower than usual for this type of digger compared to what could be bought in his local area. But this was being advertised in the north of England where he thought the prices would usually be lower – typically £3,000 to £4,000.

The seller sent Mr S an invoice and he checked the company online. He asked to pay by credit card but was told they wouldn't accept that. He was told they'd need payment by bank transfer.

Mr S sent payment from his account with Santander by Faster Payments bank transfer to the account details he'd been given by the seller. This was to a business account in the name of the company he thought he was dealing with.

But after he'd paid the seller didn't answer his calls. He reported what had happened to Santander and the scam was uncovered.

Santander tried to recover Mr S's money from the receiving account. But unfortunately, by the time the scam had come to light, almost all the money had been removed and only £100 remained to be recovered.

Santander is signed up to the Lending Standards Board's Contingent Reimbursement Model (the CRM Code) which can offer additional protection from Authorised Push Payment scams (APP scams) such as this one. But Santander said it wouldn't refund Mr S because he hadn't been sufficiently cautious when deciding to go ahead and make the payments. In particular it noted that he'd fallen victim to a very similar scam, involving a lorry advertised on the same social media site about six months earlier, and so knew about the risks of scams like this.

Mr S didn't agree and referred a complaint about the outcome to this service for an independent review.

Our Investigator looked into everything that had happened. But she didn't think Santander had treated Mr S unfairly and didn't think it needed to refund the remaining loss. The Investigator thought the price advertised was arguably too good to be true. She acknowledged that Mr S had taken some steps before sending the payment but didn't think this justified overlooking signs that should have been a concern, particularly the very low price and knowing about the risk of buying a machine like this on social media without having seen it in person. So the Investigator didn't think Santander needed to refund Mr S.

Mr S didn't accept the Investigator's assessment. His complaint has been referred to me to reach a final decision on the matter.

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 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.

Having done so, I have reached the same conclusions as those of the Investigator and for broadly the same reasons. In saying that I don't underestimate the impact this has had on Mr S. I can understand why he wants his losses refunded.

But I have to recognise that the principal cause of his losses here was the scammer who deceived him. And I need to take into account that Santander has a primary obligation to carry out the payment instructions its customers give it. As a starting point, a customer is therefore assumed liable for a bank transfer they have told their bank to make.

The additional protections that can be available when payments are made by credit or debit card simply don't apply to bank transfers. However, as I've mentioned above, the CRM Code can provide some additional protection for the victims of APP scams. I'm satisfied that the payment made by Mr S falls within the scope of the CRM Code. But despite offering additional protections, the CRM Code includes provisions allowing a firm not to reimburse APP scam losses in some situations.

Relevant here, this includes where the customer made a payment without a reasonable basis for believing that the person the customer was dealing with was legitimate, selling genuine goods, or that the payee was the person the customer was expecting to pay.

Santander reviewed Mr S's claim against the CRM Code, and thought this exception applied. It didn't think it was required to reimburse him.

I've therefore considered whether it is fair for Santander to apply this exception to reimbursement. In other words, whether Mr S made the payment without having a reasonable basis for believing either that he was paying a legitimate seller for genuine goods. In determining this, I have carefully considered everything Mr S has submitted as well as the evidence submitted by the bank.

Firstly, I think the price was low enough to have meant Mr S should have taken extra care to ensure it was genuine. He told our investigator that the price was "*very, very good*". I don't doubt the price would have appeared enticing, considering how cheap it was in relative to the typical price. But a very low price can be one indicator that there is potentially something untoward about the seller or the proposed deal.

I've noted Mr S's argument that this type of machine can be bought for nearer to this price in some parts of the country. But I think he appreciated this was still a very low price all considered. And I think this should have been a sign of higher than usual risk and prompted him to take extra care before deciding whether or not to go ahead.

Yet, besides the low price, there were other factors here that should have raised additional concerns about the legitimacy of the seller. Specifically, when Mr S asked about paying by credit card and about viewing the mini digger before making any payment the seller declined both requests.

I also can't exclude the relevance of Mr S having fallen victim to a very similar scam recently. In that earlier instance an item was advertised on the same social media platform, having again been found for Mr S by a friend. Similarly, the seller wasn't able to provide the vehicle for a couple of days, and similarly it turned out the sale was a scam.

Again, I think even if there hadn't been other factors that caused concern (which there were) this meant Mr S should have been alert to the risk of the mini-digger advert also being a scam.

I've listened to the call Santander had with Mr S after that earlier scam. The bank explained to Mr S about the risk of purchase scams, what to look out for, and what to do to avoid scams in future. I'm satisfied that Mr S understood what he was told on this call, and I think it's reasonable to conclude he was aware that purchases through the social media platform had a risk of being a scam.

Santander also says it provided a scam warning at the time Mr S was paying for the mini digger. It says this included the following wording: *"Could this be a purchase scam? Criminals post fake adverts and ask for upfront payment. If you haven't seen this item in person, this could be a scam."*

Mr S doesn't recall seeing this warning at the time. However, I'm persuaded by the information Santander has provided that it most likely was shown to him. Of course, I appreciate there are reasons Mr S might not have realised the relevance or importance of the message at the time. However, I think it reinforced the earlier experience he'd had of the risk of purchase scams, and it matched the situation he was in at the time.

All in all, and taking everything into account, there were several factors pointing to the need for greater care before sending even a deposit payment, let alone the full value of the item. Yet the seller was insisting on full payment upfront and wouldn't accept card payments. And without the ability to see the item before paying the full price I think Mr S was putting a lot of trust in a stranger. Buying a high value item on social media, sight unseen, and at a very low price was always going to be a big risk. Mr S should have considered walking away from the deal.

Unfortunately, I think making a large payment in that situation was a significant risk to have taken, and I think Mr S reasonably would have known that. In terms of the CRM Code, where a customer made a payment without having a reasonable basis for believing they were paying for legitimate goods from a legitimate seller, or that they were paying the person they believed they were, then their bank does not need to refund them for their loss even when this was due to a scam. I think Santander is entitled to rely on that here – I think it has done enough to establish that Mr S didn't have a reasonable basis for believing this was legitimate.

Based on what Santander could reasonably have known at the time, this payment wasn't one which would have particularly stood out as being at risk of being connected to a fraud or

scam. With this in mind, I don't think there was a requirement to give an 'Effective Warning' under the terms of the CRM Code. And I don't think Santander needed to take specific steps at the time, such as intervening directly before it would release Mr S's payment.

When Santander was made aware of what had happened it acted appropriately and tried to recover the funds, although only a small part remained – the majority having been moved on very quickly after the second payment had been made.

In short, I don't find Santander is to blame for Mr S's losses. I don't find it is liable to refund him under the terms of the CRM Code either.

I appreciate that he's lost a significant amount because of what happened. But I can only look at what Santander was required to do and is committed to do now under the CRM Code. I have no power to consider the actions of the criminal scammers who were ultimately responsible for Mr S's loss. And I don't find Santander is required to refund him under the CRM Code, nor that the bank was at fault in making the payment Mr S had instructed it to make or for any other reason.

My final decision

For the reasons given above, I do not uphold Mr S's complaint about Santander UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 November 2023.

Stephen Dickie
Ombudsman