

The complaint

Miss G is unhappy that Santander UK Plc will not refund the money she paid for a vehicle. She believes she has been scammed and has lost out as a result.

What happened

The circumstances which led to this complaint are well-known to both parties, so I won't repeat them in detail here. But, in summary, I understand them to be as follows.

Miss G has explained that she saw a vehicle for sale on a well-known social media shopping platform that she was interested in. She contacted the seller and arranged to meet them to view the vehicle, which she did at a shopping centre car park.

Miss G has said she was able to test drive the vehicle and she noticed that the front bumper was slightly lifted, so she asked the seller if the vehicle had been in an accident. Miss G said the seller told her it hadn't and that the only issue with it was that the parking sensor wasn't working.

After test driving the vehicle Miss G agreed to purchase it and agreed a price of £6,075. She made four payments to the seller, two from her Santander account (totalling £1,500) and two from an account she held with another banking provider (totalling £4,575).

The transactions that Miss G made from her Santander account, which are the payments relevant to this complaint, are listed below:

| | |
|------------|--------|
| 6 May 2022 | £100 |
| 6 May 2022 | £1,400 |

The following day Miss G went to the Post Office to arrange for the vehicle to be taxed, but found she was unable to do so as the seller had given her a V62 form, rather than the vehicle's logbook. Miss G contacted the seller, who told her that they would send the logbook to her after the weekend.

Miss G has said she then had a mechanic look at the vehicle and he told her it wasn't roadworthy. She also told Santander that she'd paid for a DVLA check and found out that the vehicle was in the seller's name but had been written off as a Category S.

Following this Miss G contacted the seller again, telling them that they had sold the vehicle without a logbook and that it had been in an accident. Miss G asked the seller to refund her the money that she'd paid and to pick up the vehicle. The seller responded to Miss G to say that the advertisement had mentioned that the vehicle was a Category S, they added that it was fine if Miss G wanted to return the vehicle, but they would deduct 20% of the money paid for the hassle and time.

The seller stopped communicating with Miss G after she'd told them that she'd gone to the DVLA and the Police. They told Miss G that they'd spoken to somebody from the Police who'd said to leave the matter with them. The seller added that they would have been happy

to help out with the paperwork and process, but now they had been advised not to. The seller maintained that the vehicle was fine and without the previous accident it would be worth much more than Miss G had paid.

Miss G raised the matter with Santander, as she believes she has been the victim of an authorised push payment (APP) scam. Santander looked into the concerns that Miss G had raised. It considered the Contingent Reimbursement Model ("CRM Code"), of which it is a signatory, and sent its final response to Miss G, not upholding her complaint. It deemed the matter a civil dispute between Miss G and the seller.

Miss G then brought her complaint to our service. One of our Investigators looked into things but didn't uphold the complaint. In summary, she considered this was a dispute between Miss G and the seller, who she had made the payments to, so she didn't think the payments were covered under the CRM Code.

Our Investigator didn't think the evidence demonstrated Miss G had been scammed. In summary, she said this because Miss G had successfully purchased the vehicle and driven it away and she was still in possession of the vehicle. Our Investigator added that she had contacted the DVLA and asked generally about Category S vehicles and it was the case that, once any repairs had been completed on the vehicle, Miss G could register the vehicle in her name through the DVLA. She also added that information she'd seen from the receiving bank (the bank to which the payments were made) didn't give her any concerns.

Miss G didn't agree with our Investigator's view. In summary, and through her representative, she maintained that she believes this was pre-meditated fraud.

As agreement couldn't be reached the complaint has now been passed 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.

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 have been good industry practice at the time.

Before setting out my findings, I'll clarify that whilst I've read and considered all the submissions in their entirety, I won't be responding in the same level of detail. It isn't my role to respond to each and every point made, and I hope the parties won't consider this a discourtesy. This also means that, in keeping with our role for quick and informal resolutions, I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint. As I understand it, the crux of the complaint here is that Miss G is unhappy that Santander won't refund the money she's sent for the purchase of a vehicle, which she believes was the result of a scam.

In her submissions, and through her representative, I'm mindful that Miss G has referred to matters such as the bank's processes. I would point out that we're not the regulator of financial businesses, it's not the role of this service to tell a bank how it should run its processes, nor is it this service's role to monitor those processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers.

Having considered everything, I can see no basis on which I can fairly require Santander to refund the money Miss G has sent. I can appreciate that this outcome is not the one Miss G was hoping for and I can understand why she wants to try and recover this money. But having thought about Santander's actions, I am unable to say it has a responsibility for refunding the money Miss G sent. I will explain why.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. When Santander made the payments, it was complying with Miss G's instructions. At the time, Miss G wanted to pay the seller and there was no mistake made as the money was sent to the correct account details. As I don't think Santander acted incorrectly by making the payments, I've gone on to consider whether it should have refunded Miss G for any other reason.

When considering what is fair and reasonable in this case, I've also thought about the CRM Code, which I've mentioned above and which Santander is signed up to and was in force at the time Miss G made these payments.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. I've thought about whether the CRM code applies in the circumstances of the payments Miss G made and, in particular, whether Santander ought to reimburse her under the provisions of the CRM Code. But the CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) This code does not apply to:

(b) 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"

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Both the bank and our Investigator felt the payments Miss G made formed part of a buyer/seller dispute and, as such, are not covered by the CRM Code.

Miss G strongly disagrees. She feels the seller has scammed her. From what I have seen, although I accept Miss G may not have received a vehicle that was in as good a condition as she expected, I don't think I can fairly say that the situation Miss G finds herself in is a scam. I think the payments Miss G made do form part of a civil dispute and, as such, are not covered by the CRM Code. This means I don't think Santander is responsible for reimbursing Miss G under the CRM Code.

I can appreciate why Miss G feels she has been deceived. She was under the impression the vehicle didn't have any faults, other than the parking sensor. But I am mindful that Miss G did receive the vehicle for the money she paid and the seller, in communications with Miss G after the sale, doesn't try and dispute that the vehicle had been in an accident nor that it was a Category S. They also claimed the advert had stated this, although it appears the advert unfortunately is no longer available to prove or disprove this.

With the evidence that is available to me, I can't fairly or reasonably say the seller was not legitimate and had set out with an intent to deceive Miss G. There is no dispute that the vehicle exists, indeed Miss G has it in her possession, and I've not seen anything that makes me think the person selling it did not have the right to sell it. I'm persuaded this is supported by Miss G telling Santander that the DVLA check she'd carried out had showed it was registered in the seller's name. As well as this, correspondence which Miss G later received

from the DVLA stated that it hadn't received any reports from the Police suggesting the vehicle had been stolen.

The problems Miss G has raised stem back to the condition of the vehicle. But this is an issue that's clearly stated as not being catered for within the CRM Code. And I note that a Category S vehicle can still be used, subject to it being in a road worthy condition. This is important as from what I've seen there would be nothing to stop Miss G making arrangements to register the vehicle in her name and using it, albeit I appreciate there may be some work required on the vehicle before she is able to do so.

Having concluded that this wasn't a scam, there is nothing further for me to consider, as a bank can't fairly and reasonably be required to protect its customers from bad bargains or to give them advice on what they should buy. There are occasions when we do think banks should query payments – because of suspicious activity that appears unusual or uncharacteristic for the account or customer. If such potential fraud alerts are triggered, it is fair and reasonable for a banker to pause and ask questions of the payer about the transaction – which might unravel a scam and stop it before any loss occurs.

But a bank does not have to intervene with authorised payments, and cannot be held liable for losses, when there is in fact no fraud or scam, or if the payer has regrets or second thoughts after the event. As I've said above, the starting position is that the bank is expected to process payments and withdrawals that a customer instructs it to make without undue delay.

Alongside this, I'm also mindful that there are some other factors, in the individual circumstances of this case, that don't carry the typical hallmarks of these particular types of scam or a trader setting out with an intent to defraud. The seller, at least for a time, was still contactable after Miss G had made the payment. This is not typically the case with fraudsters, who more often than not, once in receipt of a victim's money, will not provide any goods at all and will then no longer be contactable. It doesn't seem to be the case here that the seller hasn't shown an intent to work with Miss G to put things right. And it isn't implausible that the seller was told to stop communicating with Miss G after she'd reported the matter to the authorities.

I've considered here that the price of the vehicle was considerably cheaper than the trade guides, which suggest a price for a vehicle of this type and mileage to be between £11,000-£12,000. I'm mindful that a vehicle being sold for a low price can, sometimes but not always, be indicative of a scam. But equally and relevant here, the seller has said to Miss G that the price was such due to it being a Category S, and that the price would have been higher had it not been for that, which is not an unreasonable explanation.

Miss G has said the seller told her to pay a small amount first and then pay the rest. I don't disagree with Miss G's representative that in situations where people have been defrauded, a payment pattern can sometimes start with a lower value transaction. But this, in and of itself, isn't enough for me to safely conclude that the seller set out with an intent to defraud Miss G. And importantly, whilst I am unable to share details about a third party and the nature of their relationship, I've also considered the beneficiary bank account, where Miss G's money was sent. The evidence I've seen from the beneficiary bank doesn't raise any concerns of any other reports of fraud, or concerns that the account is being used for anything but legitimate purposes.

I am mindful that Miss G has said she has raised the matter with the Police and it may be questionable why the seller gave Miss G the V62 form instead of the logbook. But I am not aware that there have been any charges or offences brought, and as I've explained above, it seems that Miss G can take the steps to register the vehicle in her name.

Overall and on balance, based on what I've seen. I'm not persuaded that this situation displays the hallmarks most typically associated with a scam. It follows that, I can't safely say that this would likely meet the high legal threshold and burden of proof for fraud. This is not to say that there is no issue at all between Miss G and the seller, clearly there is. But this type of dispute isn't something that the CRM Code covers. So I don't think it was unfair for Santander to take the view that it was unable to refund Miss G under the CRM Code.

I don't say any of this to downplay or diminish what Miss G has been through. She has my sympathy, in that she hasn't received a vehicle that was in the condition she had hoped for. But overall, I don't think Santander has treated Miss G unfairly when it concluded this was a civil matter.

My final decision

My final decision is that I don't uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 24 November 2023.

Stephen Wise
Ombudsman