

The complaint

Ms A complains that Santander UK Plc hasn't refunded her the payments she made when she bought a car that turned out to be faulty. Ms A believes she was the victim of a scam, but Santander says she has a private civil dispute with the seller.

What happened

Ms A holds a bank account with Santander. In summer 2023, she was looking to buy a car. She found one that looked suitable, advertised for sale on a popular social media marketplace.

Ms A contacted the seller, and they arranged for Ms A to have the opportunity to see and inspect the vehicle. Ms A says her partner and the seller took the vehicle for a test-drive. All seemed well.

She recalls the seller told them the car was mainly used for short journeys and had no issues with the MOT. He said the car had been given to him by his parents.

Happy to proceed, Ms A paid £200 deposit by bank transfer from her Santander account. The following day she collected the vehicle and paid £3,300 - being the balance of the purchase price. Again, she made this payment by bank transfer to the payment details she'd been given by the seller. She noted that the V5 document had the same surname as the person whose account she was paying.

However, a day later, it became apparent there were problems with the car when a light showed up on the dashboard. Subsequently, her and her partner felt very unsafe in the car. When they later took it to a friend's garage to be checked over, the car shook badly, before breaking down. Her friend said the car wasn't roadworthy. There was significant corrosion.

Her friend also spotted that the latest MOT certificate wasn't the one the seller had given Ms A. He noted that the current MOT had advisories logged. The government MOT checking service explains that *"Advisories are given for guidance. Some of these may need to be monitored in case they become more serious and need immediate repairs"*.

Her friend thought the car was unsafe and would only be worth £1,000, much less than Ms A had paid. Ms A didn't use the vehicle again, concerned about her and her family's safety.

Ms A contacted the seller, but he denied any wrongdoing and refused to reverse the sale or refund her.

Ms A was able to track down the person named on the V5 document. They denied having any connection to the seller, and said they'd traded the vehicle in to a car dealer. They said they'd believed it would be scrapped by the dealer.

Unhappy that she'd been deceived by the seller about the car, Ms A reported the matter to Santander.

Santander investigated. The protections (including chargeback) that could be available against breach of contract or misrepresentation for payments by card didn't apply when a payment was made by bank transfer – as happened here.

For bank transfers, where the payment was the result of an Authorised Push Payment scam (APP scam) a voluntary code exists (known as the Contingent Reimbursement Model Code – the CRM Code). But the CRM Code doesn't apply to all bank transfers. It only applies in certain circumstances – specifically limited to payments where what happened meets the Code's definition of an APP Scam. Santander didn't think this applied here. It thought Ms A had a private civil dispute with the seller - in other words, it didn't consider she was the victim of an APP scam. Santander wasn't responsible for the money Ms A had lost.

Ms A referred the matter to our service for an impartial review. One of our Investigators looked into everything. But he didn't uphold her complaint. He sympathised with the situation Ms A now found herself in but agreed with Santander that the matter was a civil dispute rather than an APP scam, so the bank had no obligation to provide Ms A with a refund. Ms A's complaints about the quality of the vehicle and the dishonesty of the seller could be taken up with the seller, but Santander wasn't at fault.

Ms A disagreed. The seller hadn't been honest with her and had made fraudulent claims. The person named on the V5 could confirm they had no relationship with the seller. The Investigator said this wouldn't alter the outcome he'd reached.

As no agreement could be reached, the case was 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.

I'm sorry to hear about the situation Ms A has been left in through having bought this car. She has paid a large sum of money to buy the vehicle but hasn't been able to use it because of safety concerns. The seller didn't tell her about these problems with the car before she bought it, and it seems hard to argue other than that he was dishonest about the car in several key respects.

But I'm not deciding a dispute between Ms A and the seller – I don't have any power to look into a complaint about the seller and how they acted, or about what they said or didn't say. My role is limited to deciding the dispute between Ms A and her bank.

Despite my natural sympathy for what has happened here, I need to focus solely on whether Ms A's been treated fairly by Santander, and specifically on whether it has obligations that might mean I can tell the bank it needs to do more to help her.

Of course, Santander didn't contract with Ms A for the car purchase, and I can't hold the bank responsible for misrepresentations or other serious failings on the seller's part. Neither is the bank responsible for the poor quality or safety of what Ms A bought.

As a starting point in law, Ms A is responsible for payments she's instructed Santander to make for her. Unfortunately, there's little protection available for bank transfer payments, as these were.

I know Ms A would like Santander to chargeback her money from the seller. But that simply isn't something a bank can do when the money was sent by bank transfer – chargeback is operated by the major card schemes and can only ever apply when a payment was made by

card payment. Similarly, protection under the Consumer Credit Act, section 75, might apply if Ms A had used a credit card to pay the seller, but it can't be relied on for Faster Payments bank transfers like these were.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams – specifically payments made by bank transfer. But it applies only in some circumstances, where the events meet the CRM Code's definition of an APP scam, and it excludes private civil disputes.

The relevant part of the Code's definition of APP Scam requires that the purpose of the transaction (such as purchasing a car) differed to what was really happening, and that difference arose through dishonest deception. For example, if the seller had offered a car for sale, but in reality, no such car existed and therefore no sale was actually taking place.

But here the seller provided the vehicle that Ms A thought she was paying for. She believed the purpose of her payments was the purchase of this vehicle and that was what happened.

The dispute rather arises from what the seller told Ms A (or didn't tell Ms A) about the quality and history of the vehicle. The seller may have given false information about these points, but that doesn't make this an APP scam under the terms of the CRM Code – ultimately, having made the payments, Ms A received the same vehicle she and her partner had seen and test-driven.

In other words, the fact that the vehicle had significant faults, and these were undisclosed by the seller, doesn't make this an APP scam covered by the CRM Code.

I want to be clear that I am not suggesting the seller was open and honest with Ms A – I do not believe that was the case.

But this is a matter Ms A may be able to take up with the seller as a private civil dispute between her and him about the representations he made during the course of the sale. While I cannot advise her on this, she may wish to obtain further information about pursuing the seller through court action. There is information available on the Citizen's Advice website with further details on how to go about doing this. Alternatively, the Scottish Courts and Tribunals website provides relevant information, including details of the new Simple Procedure process which can now be started online for a relatively small fee.

I appreciate how frustrating and disappointing this answer will be. But I don't find Santander is to blame for what happened to Ms A.

I don't find the bank is liable to refund her under the terms of the CRM Code either, because the Code isn't applicable to these payments. In the circumstances, the bank had no ability to chargeback the transfers or to otherwise recover the funds from the beneficiary.

In saying this, I want to stress that I am very sorry to hear about what happened, and the impact this has had on Ms A. She's been left out of pocket by a significant amount. But I can only look at what Santander was and is required to do. I have no power to consider the actions of the seller. I can't hold Santander accountable for what the seller told Ms A and what he failed to disclose to her. The bank was not at fault in this.

My final decision

For the reasons given above, I do not uphold Ms A's complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 11 January 2024.

Stephen Dickie
Ombudsman