

## **Complaint**

Mr A is unhappy that Santander UK Plc didn't reimburse him after he fell victim to a scam.

## **Background**

In November 2022, Mr A was looking to buy a car. He'd been in a road traffic accident and his insurers had decided to write off his previous car. He was paid a settlement figure and given a short window in which to find a replacement vehicle.

He used an online marketplace and found a second-hand car for sale. The account selling the car purported to belong to a business, rather than a private individual. Although he didn't have the opportunity to inspect the car in person, a video was shared with him which allowed him to view its general condition. The price of the car was £5,350. Mr A was asked to pay a deposit of £1,000 and then paid the balance three days later. He used his Santander account to make the payments.

Unfortunately, the person Mr A was in contact with wasn't a legitimate trader of second hand cars, but a scammer. He'd been told that the car would be delivered to his home. When this didn't happen, he became suspicious and so he notified Santander. Santander considered his claim under the terms of the Lending Standards Board's Contingent Reimburse Model (CRM) Code. It said that it should've displayed a scam warning when Mr A was making the payment, but it didn't. On that basis, it agreed to refund 50% of the money Mr A lost to the scam. However, it thought Mr A didn't have a reasonable basis for believing he was dealing with a legitimate seller. For that reason, it didn't think it should be expected to refund him in full.

Mr A was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator agreed with Santander's conclusion that Mr A didn't have a reasonable basis for believing the seller was legitimate. He thought that the advertised price of the car was much lower than it should've been. He thought this should have been an indication that something wasn't right.

He also noted that Mr A hadn't made the transfers to a company account, but to the personal accounts of two named individuals. He was told that these were employees of the dealership. Nonetheless, the Investigator thought Mr A should've found this arrangement unusual and acted more cautiously than he did.

Mr A disagreed with the Investigator's opinion. He said that he'd bought cars using this online marketplace in the past without any problem. He was using it because he was a looking for a good deal – so he didn't find it suspicious that the car was priced as it was. He was told by his contact that the individuals he was paying were employees of the business. He found this to be a plausible explanation.

Mr A was also unconvinced by the Investigator's view on the valuation of the car. The Investigator had said that it should've cost a little over £10,000 – but Mr A submitted evidence of a car that sold at an online auction for significantly less than this. Because Mr A disagreed with the Investigator's opinion, the complaint has been passed to me to consider

and come to a final decision.

## Findings

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.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances and it is for Starling to establish that a customer failed to meet their requisite level of care under one of the listed exceptions set out in the CRM Code.

Under the Code, a bank may choose not to reimburse a customer if it can establish that:

- *The customer ignored an "Effective Warning" by failing to take appropriate action in response.*
- *The customer made payments without having a reasonable basis for believing that ... the payment was for genuine goods or services and/or the person or business with whom they transacted was legitimate.*

There are further exceptions, but they aren't applicable in this case. Santander has already accepted that it ought to have provided a warning when Mr A made the payment. That means the only thing I need to consider is whether the second exception applies – in other words, did Mr A make these payments with a reasonable basis for believing that the transaction was genuine?

I've considered this point carefully and I'm afraid I don't find that he did. The price Mr A was paying was a little over half the market value of the car. The data the Investigator used to value the car is an industry tool that bases its valuations on actual sale prices. Mr A wouldn't have had access to that data, but I'm surprised he didn't carry out any checks of his own.

He found an example of the same model car selling at auction for only a little more than he believed he was paying and so he's questioned the accuracy of the valuation the Investigator relied on. He submitted a screenshot showing the price that car sold for.

Unfortunately, I can't attach much significance to that evidence. First, the car was sold via auction and auction prices are more likely to be unrepresentative of the genuine valuation of the car because the auction process itself is unpredictable. Having said that, there are many reasons why the car in question might have attracted the price that did. It could've had significant damage in a previous accident or been written off by an insurer only to be subsequently repaired. None of this information is available in the evidence Mr A has submitted to us. Overall, I'm satisfied that the valuation relied on by the Investigator was reliable.

I also think Mr A ought to have been concerned at the request that he transfer the payments to two private accounts. He believed that he was dealing with a limited company and had reassured himself that it was legitimate by checking that it had a genuine registration at Companies House. Having done that, I think he ought to have been concerned that he wasn't being asked to pay that company itself.

I don't say any of this to downplay or diminish the fact that Mr A has fallen victim to a cruel and manipulative scam. There's no doubt that he has. But my role here is to consider the extent to which the bank should be considered liable. Overall, I'm satisfied that it acted fairly and reasonably in only reimbursing 50% of the money Mr A lost to the scam.

Mr A has also explained his concerns regarding whether the receiving banks – i.e. the banks that operated the accounts controlled by the fraudsters – met all of their obligations. One of those receiving banks was Santander. However, Mr A's concerns are being investigated as part of a separate complaint and so I won't comment on them here.

### **Final decision**

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 July 2023.

James Kimmitt  
**Ombudsman**