

## The complaint

Mr S complains that Santander UK Plc ('Santander') won't refund him after he bought tickets he didn't receive.

## What happened

### *What Mr S says*

Mr S says that he heard about a seller through a friend and had also seen that the seller had offered goods on social media. He had previously paid the seller for tickets that he received. On 15 November 2022 Mr S paid the same seller £450 for an international match and then on 14 February £75 for another game, but Mr S didn't receive the tickets he paid for. Mr S tried to get in touch with the seller but wasn't able to. Mr S reported the matter to Santander on 28 February 2023.

### *What Santander say*

A voluntary code exists to provide additional protection to scam victims in many circumstances - the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code). The CRM Code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances.

Santander said Mr S had a civil dispute with the seller of the tickets. Civil disputes aren't covered by the CRM Code.

Mr S didn't agree and brought a complaint to this service.

### *Our investigation so far*

The investigator who considered this complaint recommended that it be upheld in full. He said that Mr S was the victim of a scam and had a reasonable basis for believing he was dealing with a legitimate seller as he'd previously received tickets.

Mr S accepted the investigator's findings, but Santander didn't. It asked for further evidence Mr S reported the matter to the police. The complaint was then passed to me to consider. To try to understand this complaint better I asked Santander to provide a recording of the call when Mr S reported the scam, but I wasn't able to listen to the calls that Santander sent.

I carefully reviewed all the available evidence and issued a provisional decision on 3 October 2023. In the "*What I provisionally think – and why*" section of it I said:

*"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 what happened to Mr S. He has lost money and doesn't seem to have been treated fairly by the ticket seller. I can understand why Mr S feels so strongly that his losses should be refunded to him. But that doesn't mean that Santander is responsible for the money Mr S lost or that it now needs to refund him.*

*A bank 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 payment they have instructed to be made.*

*Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code is quite explicit that it doesn't apply to all payments. It says it does not apply to private civil disputes, including payments made to legitimate suppliers where the goods or services weren't received.*

*So, the CRM Code isn't a general protection for consumers against non-receipt of goods as has happened here. Instead, the CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP scam, in other words a criminal fraud. In particular, the CRM Code doesn't apply unless it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met.*

*Here there doesn't appear to be any doubt that Mr S didn't receive what he paid for. But in order to be satisfied that Mr S has been the victim of an APP scam covered by the CRM Code, I'd have to be satisfied that the evidence is enough for me to be persuaded the ticket seller was intent on defrauding him from the outset. While I'm sorry to disappoint Mr S, I'm not persuaded I can say that is most likely what happened here and will explain why.*

*The only evidence I have in this case is Mr S's testimony and some messages between Mr S and an unknown third party who appears to have also lost money. As these messages must have been some time after Mr S made the transfers, they don't help to determine the seller's intent at the time of payment. I haven't been provided with any messages between Mr S and the seller at the relevant time.*

*Mr S didn't report the matter to the police, and I haven't been provided with any evidence to suggest that the police have investigated Mr S's concerns or anybody else's and concluded that the seller acted fraudulently. I do not have the power to compel the ticket seller to testify, and I cannot instruct a police investigation into the matter. Instead, I'm restricted to considering what I think is more likely than not (and not just as likely) based on the evidence available to me.*

*The seller of the tickets had previously provided Mr S with tickets as expected. It's possible that he suddenly decided to criminally defraud Mr S (and seemingly one other person Mr S knew) and had no intention of providing them when Mr S made the payments that I'm considering in this case. It's also possible that the seller genuinely intended to provide the tickets at the time Mr S paid for them but, for whatever reason, later changed his mind. I haven't seen any evidence to persuade me that the first option – criminal intent – was more likely and so I can't reasonably conclude that the CRM Code applies in this case.*

*I also don't think the payments Mr S made were sufficiently out of character or unusual that Santander ought to have had concerns when Mr S submitted the payment instructions. The payments were all relatively low in value and were unremarkable when compared to the normal use of Mr S's account. So, I don't consider Santander needed to intervene before processing them.*

*I realise that my provisional decision will be disappointing for Mr S but overall, for the reasons I've explained, I can't fairly or reasonably ask Santander to refund the money he lost."*

Santander provided the calls I'd requested in a different format, so I was able to listen to them. Mr S let me know he was unhappy with my provisional decision. In summary, he said:

- He can report the matter to the police at any time.
- He has been scammed.
- I should have listened to the recordings before issuing my provisional decision.

Mr S also provided some additional evidence in the form of text messages which I'll discuss below.

## **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.

After reviewing all the evidence my decision hasn't changed. For the reasons set out in my provisional decision (and reproduced above) I consider that Mr S has a civil dispute with the seller of the tickets which is not covered by the CRM Code.

I discussed in my provisional decision the fact that to decide Mr S is the victim of a scam as set out in the CRM Code I'd need to be satisfied that the seller of the tickets intended to defraud Mr S at the time he sold the tickets. The fact tickets weren't ultimately provided isn't enough to satisfy me this was the case.

Mr S has provided text messages he exchanged with the person who sold him the tickets that suggest the ticket seller hasn't received the tickets he expected from a third party. In one message Mr S asked the seller what was going on and whether he'd been "*bumped for me money*" and the seller responded to say that he was the one that had been "*bumped*" and he'd make sure Mr S got a refund. Subsequent messages in February 2023 show this didn't happen, and the seller didn't respond to Mr S' messages.

The messages Mr S has provided weren't the ones he exchanged at the time he bought the tickets. But they give the clear impression that the seller Mr S paid had good intentions but was himself let down by an unknown third party, for whatever reason. This reinforces my belief that it's more likely than not the criminal intent I referred to in my provisional decision didn't exist at the time Mr S bought the tickets.

Mr S has said he could report the matter to the police at any time, which I accept. The fact that something is reported to the police doesn't in itself mean that a crime has been committed though. My point in my provisional decision was that there is no police evidence to suggest that Mr S was the victim of a scam as opposed to not getting what he paid for.

I have listened to Mr S' calls with Santander but they don't add anything to the issue of whether Mr S is the victim of a scam, so I won't go into detail here. In the calls Mr S explained what happened and Santander asked questions to gain a greater understanding.

I appreciate that Mr S feels very strongly about this matter, but I'm not satisfied there is evidence of an intention to deceive him at the time he made the payments so I can't reasonably ask Santander to consider Mr S' complaint under the CRM Code.

## **My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 December 2023.

Jay Hadfield  
**Ombudsman**