

The complaint

Mrs and Mr S complain that Santander UK Plc didn't treat them fairly when they lost money to someone purporting to sell them a car.

What happened

The details of this case were clearly set out by our investigator when she wrote to Santander upholding Mrs and Mr S's complaint. As such the facts are well-known to both parties and I don't need to detail them at length here.

But, to recap in brief, Mrs and Mr S were looking to purchase a car. They'd found one that looked suitable, listed for sale on a well-known online marketplace. Mrs and Mr S carried out a comprehensive online vehicle check, contacted the seller and arranged to inspect the vehicle in person.

During their inspection of the car, they checked the logbook and verified that the accessible Vehicle Identification Numbers (VIN) correctly matched. The seller showed them his driving licence and the name and address matched that on the logbook. All seemed in order and they were satisfied with the vehicle.

Mrs and Mr S agreed a price of £9,000 with the supposed seller. Mrs and Mr S describe him as being a relatively elderly man, and he initially asked them to pay in cash, explaining he didn't use online banking. Mrs and Mr S weren't keen to make this size of payment by cash, believing that would be riskier than a bank transfer. The man eventually agreed that they could pay by bank transfer to what he said was his daughter's account. He suggested Mrs and Mr S should describe the payment as 'paying a friend' to reflect this arrangement.

Mrs and Mr S made an initial payment of £200 by Faster Payments transfer from their joint Santander bank account. When the seller confirmed receipt, they sent a further payment for the balance, £8,800. Having arranged tax and insurance, Mrs and Mr S returned home with the vehicle.

Just over 14 days later, the Police visited Mrs and Mr S at home, and took the vehicle from them. The Police said Mrs and Mr S had been the victim of a sophisticated deception whereby the vehicle's identity (including its number plates and the accessible VIN plates) had been switched for that of another vehicle of the same make and model. This had been done to disguise the fact that this vehicle was stolen. In short, the vehicle was not the one Mrs and Mr S had believed they were buying. The car has since been returned to its legal owner.

I understand that further Police investigations have led to the arrest of a suspect. The Police have said they believe the seller was attempting to sell further stolen vehicles, that he'd given Mrs and Mr S a false name and false identification. The Police believe he may have been the front for a larger criminal gang. As such, recovery of any money from the suspect was unlikely. What's more, Mrs and Mr S had no insurable interest in the vehicle and so were unable to claim for the loss against their car insurance.

Mrs and Mr S reported the loss to Santander. In turn, Santander made an attempt to retrieve the two payments from the recipient bank. However, it appears nothing remained to be recovered.

In short, Mrs and Mr S were left without the car and without any reasonable prospect of recovering any of the money they'd paid.

Santander is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM Code) which requires firms to reimburse customers who have been the victims of authorised push payment fraud (APP scams) in all but a limited number of circumstances.

Santander didn't think it was liable to reimburse Mrs and Mr S for their losses. It said the CRM Code didn't apply to the payments they had sent because they'd received the item they paid for. It didn't think there had been 'social engineering' involved and thought this was simply a dispute with an untrustworthy seller. In its final response, Santander said this had not been a true APP scam. However, Santander paid Mrs and Mr S £100 because it considered it could have handled their fraud claim more promptly.

Mrs and Mr S didn't accept this and asked us to consider their complaint.

Our investigator thought this had been an APP scam, and further that the CRM Code did apply. She said Santander ought to have refunded Mrs and Mr S in full under the terms of the CRM Code. She recommended that Santander should additionally pay the higher sum of £175 in respect of distress and inconvenience.

The bank didn't accept these findings. While it accepted Mrs and Mr S were the victims of an elaborate fraud, it thought this was a private buyer/seller civil dispute and as such specifically excluded from the CRM Code. It suggested the remedy should instead be for Mrs and Mr S to sue the suspect to recover their loss.

In light of the disagreement, I've been asked to review the complaint and reach 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.

Having done so, I have reached broadly the same outcome as that reached by our investigator and for similar reasons. In summary, I am satisfied that:

- The relevant payments fall within the scope of the CRM Code. I consider Mrs and Mr S were the victims of an APP scam here. The seller does not appear to have merely been untrustworthy, but rather showed a clear intent to defraud. I do not consider this to be the type of civil matter excluded under the CRM Code.
- Under the terms of the CRM Code, Santander should have refunded the money Mrs and Mr S lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- I acknowledge there exists a possibility (albeit remote) that Mrs and Mr S might later be able to recover part or all of their loss from the suspect the Police have now apprehended or from an associated criminal gang. I don't consider this possibility should prevent Santander from reimbursing Mrs and Mr S under the CRM Code now (nor would it have at the time Mrs and Mr S first reported the matter to Santander).

Santander may choose to obtain an undertaking from Mrs and Mr S to entitle it to any money recoverable elsewhere by Mrs and Mr S.

- In the circumstances, Santander should now fairly and reasonably refund the money Mrs and Mr S lost.
- The money was sent from Mrs and Mr S's current account. It is not clear how they would have used this money if Santander had reimbursed them when it should have done, so Santander should also pay interest on the money refunded at the rate of 8% simple per year. This interest should apply from the date Santander first declined to reimburse Mrs and Mr S until the date of settlement.
- I consider it fair and reasonable in all the circumstances that Santander should in addition pay a higher sum in respect of the distress and inconvenience its actions have resulted in. It has already paid Mrs and Mr S £100 and now should pay them a further £75.

I have carefully considered Santander's representations – including those given in response to our investigator's assessment – detailing the reasons it considers Mrs and Mr S should not be refunded under the CRM Code. But these do not persuade me to reach a different view here. I am satisfied the CRM Code applies to Mrs and Mr S's case, and I am not persuaded Mrs and Mr S failed to meet their requisite level of care under the CRM Code (a failure to meet that level must be established for Santander to choose not to reimburse under the terms of the CRM Code at the time).

Firstly, while I accept this is a relatively uncommon scam, I am satisfied the CRM Code applies here for the following reasons:

- Mrs and Mr S were tricked into transferring a total of £9,000 to an account controlled by a fraudster. It is not disputed that after making the payments they were able to drive away in a vehicle. But the ownership of that vehicle did not pass to Mrs and Mr S — they did not receive what they paid for. The information I have seen — including that relating to the Police investigation — persuades me on balance that there was never any intent on the part of the seller for this to have constituted a legitimate sale. The seller was not the owner — nor was the seller acting on behalf of the legitimate owner — this was a stolen vehicle disguised in order to obscure that fact. Mrs and Mr S fell victim to what was a sophisticated deception designed to defraud them of the money they paid in good faith. In short, the seller obtained money by deception. This was an APP scam.
- I find the exclusion in the CRM Code for *“private civil disputes, such as where a Customer has paid a legitimate supplier for goods [...] but has not received them”* has not been fairly applied by Santander in this case — and this case should not be excluded on that basis. I understand and agree with Santander's point that the exclusion should not be read simply as referring narrowly to legitimate suppliers. But I am not persuaded the exclusion is intended to apply to scenarios where losses have occurred through an APP scam intended to obtain money by deception — and as I have explained above, that is what I consider happened here. I find Mrs and Mr S were the victims of an APP scam, and one within the remit of the CRM Code.
- As set out above, I am therefore satisfied that this was an APP scam, and one covered by the CRM Code. The CRM Code contains an overarching provision: *“to increase the proportion of Customers protected from the impact of APP scams, both through reimbursement and the reduction of APP scams”*. Santander argues that it need not reimburse because there is the possibility of recovery of funds from the 'seller' following his identification (and arrest on criminal charges). But while I have carefully considered Santander's point here, I am not persuaded the CRM Code's intent to protect customers from the impact of APP scams would be met by requiring Mrs and Mr S to pursue what the evidence here suggests would most likely be a futile attempt to recover funds directly from the arrested individual (or an associated

criminal gang). Of course, if it should later prove possible to recover any monies from the perpetrator(s), double recovery of the loss by Mrs and Mr S would not be a fair outcome. But Santander can ask Mrs and Mr S to undertake to transfer to it any rights they may have to recovery elsewhere. So I find the remote prospect of recovery elsewhere is not a reasonable barrier to Santander considering these scam payments under the CRM Code or to reimbursing Mrs and Mr S in line with the CRM Code's provisions.

- In all the circumstances, I am satisfied these transactions fall under the remit of the CRM Code, and given that Santander is a signatory, it follows that the CRM Code is applicable to Mrs and Mr S's losses.

Secondly, I'm satisfied that Santander has not shown that Mrs and Mr S failed to meet their requisite level of care under the CRM Code. In particular I find it has not established that they lacked a reasonable basis of belief prior to making these payments because:

- I've not seen anything that I consider should reasonably have led them (in advance of the purchase) to have any real concerns about this not being a legitimate sale. While Mrs and Mr S had negotiated a relatively low price for the vehicle, I'm satisfied this was not 'too good to be true'.
- Before sending any payment, Mrs and Mr S had taken several precautions. They'd paid for an online vehicle check, which hadn't uncovered anything untoward. They'd physically inspected the vehicle and checked the VIN number (the chassis number) against the logbook. Unfortunately, it seems the readily accessible VINs had been altered to match that of the cloned vehicle. I'm persuaded this was part of the deception.
- Mrs and Mr S were shown a driving licence with a name and address matching that shown on the logbook. It now appears the licence was a fake, with the Police apparently establishing the seller was not who he claimed to be. But I find that it would likely have given Mrs and Mr S a reasonable basis for believing they had verified his identity. I also find the explanation they were given about the reason for paying the man's daughter was plausible in the circumstances. I think Mrs and Mr S did enough here to have a reasonable basis for believing they were paying the person they were expecting to pay.
- I think the precautionary steps they took here were enough here to have a reasonable basis for believing this was a legitimate transaction for genuine goods.
- The risk that this could be a stolen vehicle was one that I find would have likely appeared a remote one to Mrs and Mr S, given they'd met the supposed seller in person and carried out an inspection of the vehicle – none of these having raised concern.
- Thinking here about all the circumstances in this case, including the sophistication of the deception and the numerous checks Mrs and Mr S completed before making a payment, I'm persuaded that, overall, Mrs and Mr S both acted reasonably and had a reasonable basis for belief here.

In summary, I find that the CRM Code is applicable here. I find that Mrs and Mr S met their requisite level of care under the CRM Code and were therefore entitled to be fully reimbursed in accordance with the provisions of the CRM Code.

Distress and Inconvenience

Mrs and Mr S have explained about the distress and inconvenience they have been caused by everything that happened. While most of the distress and inconvenience they describe stemmed from the actions of the scammer, not Santander, I have taken account of the extent of the impact on Mrs and Mr S attributable to Santander itself - through its handling of the matter. Santander accepts this wasn't handled as well as it should have been and has already paid Mrs and Mr S the sum of £100.

Awards for distress and inconvenience are a matter of discretion, and I believe such an award should fairly be paid in this case. In all the circumstances I consider Santander should pay Mrs and Mr S a further £75 (in addition to the £100 it has already paid them) in respect of the material distress and inconvenience it caused them here.

Putting things right

To put matters right, Santander UK Plc should pay Mrs and Mr S the following:

- the sum they lost – i.e. £9,000 – within 28 days of receiving notification of their acceptance of my final decision; plus
- interest at the simple rate of 8% per year on that amount (less any tax properly deductible) from the date Santander initially declined to consider Mrs and Mr S's claim for reimbursement under the CRM Code to the date of settlement; and,
- a further £75 (in addition to the £100 Santander has already paid) in respect of the distress and inconvenience caused to Mrs and Mr S by its handling of the matter.

Santander may require Mrs and Mr S to provide an undertaking to assign to it their rights to any monies they might elsewhere be entitled to recover in respect of this loss. If Santander asks Mrs and Mr S to provide such an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking. Santander may treat Mrs and Mr S's formal acceptance of the terms of my final decision as being sufficient for this purpose. Alternately, Santander would need to meet any costs in drawing up an undertaking of this type.

My final decision

For the reasons set out by the investigator and above, I've decided that Mrs and Mr S ought to have been fully refunded under the CRM Code. I therefore uphold Mrs and Mr S's complaint and direct Santander UK Plc to pay them compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 24 May 2022.

Stephen Dickie
Ombudsman