

## **The complaint**

Miss G is unhappy because Santander UK Plc has declined to reimburse her the money she lost when she attempted to purchase a car, which it later emerged was not owned by the seller.

## **Background**

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

But briefly, Miss G was looking to purchase a car. She found one that looked suitable listed for sale on a well-known online vehicle marketplace. Miss G contacted the seller and arranged to travel to inspect the vehicle. She also completed a HPI check on the vehicle which didn't generate any concerns.

When Miss G arrived at the address provided by the seller, she advised him she was there and he explained he was at a supermarket but would be there shortly. The seller arrived with the vehicle, allowed Miss G to test drive it and provided the car's log book and MOT. Miss G noticed the vehicle's log book was registered to a woman and questioned this. The seller explained the car was registered in his partner's name but that he was selling it for her. Happy with the car, Miss G agreed to pay £2,900 for it and made the payment to the seller on 25 March 2021 by bank transfer.

After the sale, Miss G says she realised the seller hadn't signed the section of the log book he was required to and chased him several times, but he kept advising her he was too busy.

Around two weeks later, while driving, Miss G was pulled over by the police. She was told the car had been reported as stolen a few days after Miss G had bought it. The police were satisfied Miss G was an innocent party and allowed her to drive the car home before it was seized and returned to its true owner.

The police department who investigated this complaint have provided further details on how this scam came about. The car was advertised initially online by a dealership. The seller 'paid' the dealer for the car using an illegitimate card and arranged for the car to be shipped by a transport company to the other side of the UK. The same day the car was delivered, it was placed for sale for a lesser price (which is the advert Miss G saw).

When the illegitimate card payment wasn't successful with the dealership, being unable to contact the seller, the dealership reported the car as stolen. Unfortunately, neither the dealer nor the delivery company had any legitimate address for the seller by which to contact him and so far police have been unable to trace the seller.

The police have confirmed this is being treated as fraud due to:

- The turnaround time between the purchaser buying and reselling the car
- The purchaser selling the car immediately at a loss

- No address or details being provided by the purchaser
- The use of an illegitimate card

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 Miss G for her losses. It said the CRM Code didn't apply to the payment Miss G had sent because it considered this was a civil matter between Miss G and the seller. Santander said that when buying items from a private seller, there is an accepted risk that the remedy available to the buyer is to sue the seller. It said that the car Miss G intended to buy did exist, but the seller may not have had authority to sell it, although also suggested the seller may have been selling the car on behalf of their partner as an agent.

Santander also said that even if this complaint was covered by the Code, they don't consider Miss G had a reasonable basis for believing the transaction was legitimate. For example, they said the log book demonstrated the car was legally owned by another party.

Miss G didn't agree with Santander's outcome and asked us to consider her complaint. An investigator thought this had been an APP scam, and that the CRM Code did apply here. He thought Santander ought to have refunded Miss G in full under the CRM Code.

Santander didn't accept these findings, so the complaint has been passed to me for a decision.

## **My findings**

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 payment falls within the scope of the CRM Code. I consider Miss G was the victim of an APP scam here. The seller does not appear to have had any legitimate intention, 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 Miss G lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- In the circumstances, Santander should now fairly and reasonably refund the money Miss G lost.
- The money was sent from Miss G's current account. It is not clear how she would have used the money if Santander had refunded it when it should have done, so Santander should also pay interest on the money it should have refunded at 8% simple per year. This interest should apply from the date Santander first declined to reimburse Miss G to the date of settlement.

I have carefully considered Santander's reasons it considers Miss G 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 Miss G's case, and I am not persuaded Miss G failed to meet her 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).

I am satisfied the CRM Code applies here for the following reasons:

- Miss G was tricked into sending £2,900 to a fraudster. From the information I've seen, including information from the Police investigation – I'm persuaded that, on balance, there was never any intent on the part of the seller for this to have constituted a legitimate sale. The seller had deceived the dealership to part with the car by using a fraudulent payment card, ensured neither the dealership nor the delivery company had any traceable address for him, avoided all further contact with the dealer, put the car back up for sale on the same day, before the car could be recorded as stolen and then provided a cover up reason to Miss G for why the log book provided wasn't in his name. For these reasons I'm satisfied that Miss G fell victim to a sophisticated scam, designed from the outset to defraud her of money. I therefore find the exclusion in the CRM Code covering "*private civil disputes, such as where a Customer has paid a legitimate supplier...*" does not apply in this case, and this case should not be excluded on that basis. I don't agree that there should be any discrepancy on whether this exclusion applies, regardless of whether the seller was private or otherwise, if the intention of the sale from the outset was always to defraud. I find Miss G was the victim of an APP scam and one within the remit of the CRM Code.
- In all the circumstances, I am satisfied this transaction falls under the remit of the CRM Code, and given that Santander is a signatory, it follows that the CRM Code is applicable to Miss G's losses.

I'm satisfied that Santander has not shown that Miss G lacked a reasonable basis of belief prior to making the payment because:

- Before viewing the car, Miss G carried out a HPI check. Unfortunately, at this time, the car hadn't yet been declared stolen and there was therefore no cause for concern.
- Miss G had carried out an inspection of the vehicle, including test driving it, as well as receiving documentation for the vehicle. While Miss G identified a discrepancy on the log book over the vehicle owner, I think the reason she was given by the seller was plausible. In the absence of any effective warning from Santander, in the particular circumstances of this case, I consider Miss G acted reasonably by taking this information at face value. I think the risk that this could be a stolen car was one that I find would have likely appeared a remote one to Miss G, given she'd met the seller, believed she knew where he lived, had test drove the car and been handed its documentation, without any significant concerns.
- While Miss G paid less for the car than the seller had paid the dealership, I don't think the price was so different that this should've raised concerns with Miss G – I don't consider the car's price was 'too good to be true'.

In summary, I find that the CRM Code is applicable here. I find that Miss G met her requisite level of care under the CRM Code and was therefore entitled to be fully reimbursed in accordance with the provisions of the CRM Code.

### **My final decision**

For the reasons set out by the investigator and above, I've decided that Miss G ought to have been fully refunded under the CRM Code. I therefore direct Santander UK Plc to pay Miss G:

- The £2,900 Miss G lost to the scammer
- 8% simple interest from the date Santander initially declined to consider Miss G's claim for reimbursement under the CRM Code to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 30 March 2022.

Kirsty Upton  
**Ombudsman**