

Complaint

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

Background

In April 2023, Mr K entered into an agreement to make a bulk purchase of a popular drink. He intended to resell those drinks to retailers in the UK. He'd become aware of the opportunity through an online business networking group he participated in. Another group member who Mr K trusted vouched for the legitimacy of the supplier. Unfortunately, although Mr K didn't know it at the time, that supplier was a fraudster.

The total value of the contract was £14,760 – but Mr K was asked to pay a little over 20% up front. He was initially told to make an international payment to the supplier's US-based bank account, but this was later changed. The supplier advised that a UK bank account would be more convenient and could avoid potential customs issues. Mr K transferred a little over £3,000 from his Santander account to what he believed was the supplier's UK bank account.

Upon realising he had fallen victim to a scam, Mr K immediately notified Santander. It agreed to refund 50% of his loss but declined to reimburse the full amount. Santander said that Mr K didn't have a reasonable basis for believing that he was dealing with a legitimate business. It specifically highlighted the following concerns:

- The invoice provided to Mr K had an unusually generic invoice number ("12345") and incomplete details, such as the absence of a proper date and year.
- Mr K should have been sceptical of the arrangement, as he was promised £14,000 worth of goods while paying only 20% upfront.
- Mr K was asked to transfer the payment to a UK bank account that was in a different name from the individual with whom he had been negotiating the deal.
- The company Mr K thought he was paying had no affiliation with the manufacturers of the drink.

Mr K didn't agree and argued that:

- The invoice number "12345" could have been legitimate, and in his view, it was not a sufficient indicator of fraud.
- He did not find it suspicious that the payment was being made to a UK bank account, despite the supplier being based in the United States.
- Similarly, he did not view it as unusual that the UK bank account was in a different name than the individual with whom he had been negotiating.
- Mr K didn't believe he was dealing with the manufacturer of the drinks, but a similarly named company that was involved in the wholesale distribution of other products too. He carried out an online search and found the company's warehouse address matched the one provided on the invoice. He also pointed out that the website listed the address as one of its operational locations, and the company appeared to be involved in the wholesale of food and drink products.

An Investigator upheld Mr K's complaint. He concluded that Mr K did have a reasonable

basis for believing he was dealing with a legitimate business. Santander disagreed with the Investigator's assessment and so 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 broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account. However, that isn't the end of the story. Santander is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams in all but a limited number of circumstances.

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

- The customer ignored an effective warning in relation to the payment being made; or
- The customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.¹

Santander has already reimbursed 50% of Mr K's losses. However, it continues to argue that the second exception set out above is applicable to this case – i.e. that Mr K made the payments without a reasonable basis for believing they were in connection with a legitimate purchase.

I accept that Mr K did sincerely believe that he was entering into an agreement with a legitimate supplier. However, I'm not persuaded that belief was a reasonable one. He says he conducted an online search and found that the company's address matched the one on the invoice. However, the website and social media profiles of the company he believed he was dealing with clearly indicated that the business was involved in the importation of specialty food products from Brazil to the United States. That should have raised doubts about its connection to the drink supplier whose products he thought he was buying. Mr K either didn't notice this inconsistency or chose to proceed in any event.

Furthermore, the invoice provided to Mr K had several red flags, such as an incomplete date and a highly generic invoice number. While it is true that these details could be coincidental, alongside the information that he'd have seen on the supplier's website, I think they should've prompted him to proceed only with great caution.

I acknowledge that there is a risk of hindsight bias when looking at how a customer should've interpreted what they saw at the time. However, I am satisfied that these red flags were apparent at the time of the transaction and not solely in retrospect. Mr K was starting a new business venture and had no prior dealings with the supplier. That meant it was even more important for him to exercise caution.

¹ There are further exceptions within the CRM code, but they don't apply here.

While I sympathise with his situation, I agree with Santander's assessment that he should have been more diligent before making the payment. The evidence suggests that Mr K did not take reasonable steps to verify the legitimacy of the supplier, despite several warning signs. As a result, while I know that my decision will be hugely disappointing to him, I'm satisfied that it's fair and reasonable for Santander to only refund half of his losses.

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 K to accept or reject my decision before 19 November 2024.

James Kimmitt
Ombudsman