

The complaint

Mr B is unhappy that Santander UK Plc ("Santander") won't refund him in full after he was a victim of a third-party scam.

What happened

The background to this complaint is set out in the investigator's view of 8 April 2024. But briefly Mr B fell victim to a vehicle purchase scam in March 2000. He saw the vehicle on an online marketplace and transferred the agreed sum of £10,000 on 30 March 2000 via what Mr B believed was a secure online payment method.

Mr B grew concerned and raised a claim with Santander a few days later but Santander declined his claim. Mr B found a third-party representative and the claim was resubmitted in 2023. Santander reviewed its position and agreed to refund Mr B 50% of the transaction.

Mr B brought his complaint to our service. Our investigator didn't agree Santander should refund the remaining £5,000 as she didn't think Mr B had a reasonable basis for believing this was a genuine purchase. However, she asked Santander to add simple interest at 8% per annum from the date of the transaction.

Santander agreed to add the additional interest but Mr B wanted a full refund so the complaint has been passed to me for a 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 agree with the investigator broadly for the same reasons.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

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 and the terms and conditions of the customer's account. There's no dispute here that Mr B authorised the payment – albeit he was tricked into making the payment. He thought he was paying for a campervan, but this wasn't the case.

However, where a customer makes a payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

The CRM Code

When thinking about what is fair and reasonable in this case, I've considered whether Santander should have reimbursed Mr B in line with the provisions of the Lending Standards

Board's Contingent Reimbursement Model (CRM) Code it is signatory to and whether it ought to have done more to protect Mr B from the possibility of financial harm from fraud.

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.

It is for Santander to establish that one or more of the exceptions apply as set out under the CRM Code. The exception relevant to this case is:

- In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without a reasonable basis for believing that: (i) the payee was the person the Customer was expecting to pay; (ii) the payment was for genuine goods or services; and/or (iii) the person or business with whom they transacted was legitimate.

There are further exceptions within the CRM Code, but they do not apply in this case.

The CRM Code also outlines the standards a firm is expected to meet. And it says that when assessing whether the firm has met those standards, consideration must be given to whether compliance with those standards would have had a material effect on preventing the APP scam that took place.

Did Santander meet its obligations under the CRM Code and should it have done anything further to prevent the payment?

The CRM Code says that, where firms identify scam risks, they should provide effective warnings to their customers. They should also be on the lookout for unusual activity. Santander has already acknowledged it didn't do enough when it processed Mr B's payment and it has refunded him 50% of the transaction. The investigator asked Santander to refund an additional amount in interest to compensate Mr B for being deprived of the use of his money which Santander has agreed to pay.

So I've gone on to consider whether it's fair for Santander to apply the exclusion under the Code which has resulted in it only paying Mr B 50% of the transaction.

Did Mr B have a reasonable basis for belief?

I need to consider not just whether Mr B believed he was paying for a campervan but whether it was reasonable for him to do so.

The seller had no reviews, pictures or other information. And the name of the seller did not match the name of the person Mr B was paying. I do also accept that Mr B was given an explanation as to why the name on the account didn't match the person he was dealing with on the online marketplace, but I think there were a few signs here that things weren't quite right.

Mr B was also unable to view the vehicle, (it was too far away and at the beginning of lockdown when travel restrictions were in place) but in those circumstances I would've expected Mr B to have been more wary.

I appreciate Mr B did obtain a vehicle checks report and I understand from what he has said he was given an explanation about why there was a discrepancy in the mileage for the vehicle – something the vehicle check flagged up. He also says he asked a mechanic he knew - who recommended the vehicle.

I haven't seen the email with the link that led Ms B to the fake secure payment platform. But ultimately Mr B placed a lot of trust in a stranger. There was no evidence that the person Mr B was dealing owned the vehicle and I consider that Mr B ought to have had greater concerns about the deal and that, in turn, ought to have led to a greater degree of scrutiny on his part. Buying a vehicle through an online marketplace without viewing it was always a big risk.

Our investigator obtained an indicative valuation of the vehicle based on the exact model and age Mr B believed he was paying for. Those evaluations are based on prices in 2022 as we weren't able to obtain them any earlier than this due to the time that's elapsed. The price reflects the typical sale price from recognised industry trade guides. The price wasn't too good to be true – although a little lower than industry trade prices. So, I've not placed much weight on this.

But when I think about everything I've said above holistically, I think there was enough going on here to reasonably have caused Mr B concern.

Putting things right

In order to put things right for Mr B:

Santander agreed to pay Mr B additional interest. It's not clear if it has already done so but if it hasn't Santander must pay Mr B 8% simple interest from the date of the transaction to the date it settled the matter

My final decision

My final decision is I uphold this complaint in part and Santander UK Plc must put things right for Mr B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 July 2024.

Kathryn Milne
Ombudsman