

The complaint

Mr S complains that Santander UK Plc won't reimburse the money he says he lost to a scam. He is also unhappy with how Santander has handled his claim.

What happened

In July 2023 Mr S bought an engine from a company which sold vehicle spares – I'll call that company 'A'. A friend of Mr S' who worked in the industry had sourced and ordered this engine, but Mr S made the payment for the engine direct to A on 18 July 2023.

When Mr S did not receive the engine within the expected time frame, and then saw various negative reviews of A online, he became concerned that he had been the victim of a scam, and he contacted Santander to let it know on 26 July 2023. The engine did then arrive, but it was faulty. Mr S made numerous attempts to contact A to get a refund, but received no response. He went on to contact the Citizens Advice Bureau and Trading Standards with his concerns and discovered that there had been other complaints about A.

Ultimately, Santander declined to refund Mr S' loss to him. It said this was a civil dispute between Mr S and A, and so did not accept any liability for Mr S' loss. Mr S had also raised various concerns about how Santander had handled his claim, and Santander offered him £25 as a gesture of goodwill. Mr S declined this offer, and referred his complaint to our service.

One of our Investigators looked into what had happened but did not feel the complaint should be upheld, they felt it was fair for Santander to say this was a civil dispute between Mr S and A, and they did not think any further compensation was due to Mr S for how his complaint had been handled.

Mr S did not agree, he still considers that Santander handled things poorly and that A had acted fraudulently – he therefore maintains that he should be entitled to a refund of his loss plus associated costs.

As no agreement could be reached, this case has been passed to me for review.

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.

I do appreciate how disappointing this will be for Mr S but, whilst I'm sorry to hear of what's happened, and appreciate the significant impact this has had on him, I don't think I can fairly hold Santander liable for his loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I understand that Mr S feels he has been the victim of fraud, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than fraud or a scam) for a dispute to exist between two parties.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which Santander has signed up to and which was in force at the time the relevant payment was made. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether HSBC therefore ought to reimburse Mr S under the provisions of the CRM Code.

The CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP (authorised push payment) scam. Under the CRM Code, an APP scam is defined as:

“...a transfer of funds...where (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or (ii) The customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”

The CRM Code is also quite explicit that it doesn't apply to all push payments. It says:

“DS2(2) This code does not apply to:

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier.”

Fraudulent isn't defined in the CRM Code, but as the CRM Code specifically excludes civil disputes, I think I need to consider, as a first step, whether this was a scam (where a scammer takes money from a customer for no legitimate purpose) or a civil dispute (where a payment is made to a legitimate trading company or business, but there is some dispute about the goods or services that should have been supplied).

If this was a scam, or fraud – then banks (including Santander) must follow industry and regulatory guidance, including the CRM Code, to check certain payments and in some circumstances, protect customers by stopping the payments and contacting customers about them. And where banks haven't followed the guidance, they can be asked to refund them. But where payments are made to a legitimate business for a legitimate reason, then such principles don't apply. This is then classed as a civil dispute, and for which banks normally have no liability.

Having thought very carefully about all that Mr S has said, and about the evidence provided by all parties to this complaint, I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that A set out with an intent to defraud Mr S.

I acknowledge that there do appear to have been issues with how A was operating – as evidenced by various complaints and poor reviews about the service it was providing – but that does not mean it was not a legitimate supplier or that it set out with the intention to defraud Mr S. A did supply the engine Mr S had ordered, albeit slightly later than planned, and Mr S says the engine was then defective. This situation therefore very much meets the definition of a civil dispute as set out above. Nothing I have seen suggests to me that A was not a legitimate business, although I don't doubt that it was perhaps one that was not well run. A was registered on Companies House and had been for some time at the time Mr S made his purchase, and while I cannot share details of what I've seen, A's bank accounts do suggest that it was engaged in legitimate business. I appreciate that A has since been

dissolved, but that does not mean that it was operating fraudulently when it was open, rather than simply being a business that was not well run and that went on to fail.

I also must bear in mind that, while there do appear to have been a fairly significant number of individual reports about A made to the CAB, Trading Standards have said only six of those were ultimately referred up to it, and it does not appear to have taken any action off the back of those complaints. There is no finding from any official body that A has acted fraudulently.

Overall, I must make my decision based on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely A was attempting to operate as a legitimate business at the time but that it ultimately did not provide Mr A with the quality of goods he was expecting, and then failed to respond to his requests for a refund. As I have said above, this is very much how the Code defines a civil dispute, and so I'm satisfied that Mr S is not entitled to a refund of his loss under the Code. I acknowledge that Mr S told Santander of his concerns before the goods were received, but Santander did immediately contact the receiving bank to tell it of Mr S' concerns, I don't think I would expect it to have done anything more to retrieve or refund the disputed payment at that stage.

Turning to what Mr S has said about the service he received from Santander, I can see how important this complaint is to Mr S, and that he therefore went to great lengths to ensure that it was raised at what he felt was the appropriate level within Santander. But I can also see that Santander did respond to his complaint.

Mr S first told Santander of his scam concerns on 26 July 2023, and during that call Santander said it would get in touch with him if it needed more information, I can't see that there was any promise made in this call that it would definitely call him again. Mr S chased Santander's response on 2 August 2023 and so Santander provided him with its assessment of his claim at that time, telling him that it would not be refunding his loss. Mr S was unhappy with this, and a complaint was raised. Santander told Mr S in writing on 18 August 2023 that it needed a bit more time to look into his complaint, it then provided him with a written final response – telling Mr S he could refer his complaint to our service if he was not happy – on 23 August 2023. I understand that Mr S specifically wanted a response from Santander's executive team, and that he did not receive one, but while I acknowledge the frustration this would have caused to Mr S, I don't think Santander was obliged to provide him with a complaint response from a specific person or department. And I'm satisfied that the £25 offered is adequate compensation for any frustration caused by Mr S being led to believe otherwise.

Mr S has also referred to the method of payment he used here, he feels that he was pushed into using faster payment by Santander's systems, and that he would have had more protections if he had used his card. But given that A only gave details of its bank account for payment, and does not seem to have offered Mr S the facility to make a card payment, I don't see how Santander can be held responsible for this.

I appreciate how Mr S feels about this case, and that he has lost out financially here, and some of the information Mr S has sent us does suggest that A wasn't acting professionally, but that does not mean that this was a scam, rather than a case of poor and unprofessional business practices. So, with all I have seen I don't think I can reasonably say that it was unfair for Santander to treat this as a civil dispute. This is not to say that there is no issue at all between Mr S and A. Clearly there is. But that does not mean that it is automatically fair to hold Santander responsible for the loss that has resulted from that dispute. I am also satisfied that, overall, Santander has treated Mr S fairly.

My final decision

I do not uphold this complaint. Santander UK Plc should now pay the £25 it offered to Mr S, if it has not done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 March 2025.

Sophie Mitchell
Ombudsman