

The complaint

Mr A is unhappy because Santander UK Plc ('Santander') declined to refund £684 which he lost due to a scam.

What happened

The details of the complaint are well known to both parties, so I will not go into every detail of what happened here. But in summary, in August 2023 Mr A was looking to travel from the UK to India via Dubai. He heard about a company whom I'll call 'Company I' through word of mouth. He spoke with them and agreed to buy an open return ticket which would take him from the UK to Dubai to India and then back to the UK. He sent the agreed £684 by bank transfer from his Santander account.

Mr A was sent the ticket which got him to Dubai, and was told that the ticket for the other parts of his journey would be sent to his mobile phone. When he got to Dubai, he decided he needed to return to the UK for family reasons so asked for the ticket back to London, which he says Company I said would be waiting for him at the airport. However, this was not the case and he explained that when he contacted Company I he was never given clear answers with regard to the missing tickets.

Unhappy with what had happened, Mr A went to Santander to report that he had fallen victim to a scam. Santander looked into what had happened and declined to refund Mr A as they said they did not think what happened amounted to a scam, rather it was a private civil dispute. So Mr A brought his complaint to our service, and one of our investigators looked into what had happened. They did not recommend that his complaint be upheld as they agreed that what happened appeared to amount to a private civil dispute.

Mr A did not agree. He said that he had fallen victim to a scam as they did not provide what he had paid for. As no agreement has been reached, the case has been passed to me to decide.

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.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I understand Mr A has strong views about what has happened, and I want to assure him that I have considered everything he has provided to support the complaint very carefully.

It is important to remember that I am not deciding a dispute between Mr A and Company I – I do not have the power to look into a complaint about Company I. My role is limited to deciding the dispute between Mr A and Santander. So I need to decide whether Santander acted fairly when concluding this amounted to a private civil dispute rather than a scam.

It is not in dispute that Mr A authorised the payment that left his account. The starting position in line with the Payment Services Regulations 2017 is that he is liable for the transaction. But he says he has been the victim of an authorised push payment scam and that Company I's intent from the start was to deceive him for their own financial gain.

Santander is a signatory to the voluntary CRM Code. This is a scheme through which victims of APP fraud can sometimes receive reimbursement from the banks involved. But the CRM is clear that it does not apply to:

“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”.

The CRM Code defines what is considered an APP scam and this includes where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent.

So, I can only apply the CRM Code to Mr A's payments or consider Santander's liability to him under the CRM Code if I am satisfied that the payments were made as part of an APP scam, as opposed to a situation where Company I didn't fulfil the contractual agreement with Mr A due to, for example, the business failing, operating poorly, or dissatisfaction with the services provided – these would be considered private civil disputes under the CRM Code.

I've carefully considered all the reasons that Mr A believes he was the victim of an APP scam however, I am not satisfied that I agree. I'll explain why.

I do accept that Mr A did not get what he paid for – he thought he was paying for an open return flight that would get him from the UK to India via Dubai, then back to the UK and he was only given a ticket which got him as far as Dubai. However, this is not enough to say that Company I set out with the intention to defraud Mr A from the outset.

Whilst I can quite understand why Mr A feels that Company I has scammed him, there is a high legal threshold or burden of proof to meet the definition of a scam. And there are a number of potential reasons other than this being a scam for the services not to have been provided in full to Mr A.

Company I appear to have been genuinely trading at the time of the payment. They had an active registered company and the funds were sent to a business account in the company name. I have reviewed information provided by the receiving bank about this account, and whilst I cannot go into much detail due to rules of data protection, it appears the account was being run for business purposes and no other fraud reports had been received in relation to the account. Whilst this is not conclusive, on balance it leads me to think it is likely Company I were operating as a business at the time of the transactions.

Company I provided Mr A with a valid flight ticket for the first leg of his journey. This part was more consistent with a legitimate business than a scammer – as one would assume a scammer would maximise their profits by not purchasing any part of the ticket for Mr A. When thinking about what the intention of Company I was at the time they took the payment, this does point towards an intention to provide the services paid for. So I have been unable to rule out that something else may have gone wrong here which led to the full flight tickets not being provided that do not fall under the definition of a scam. For example, there may have been a misunderstanding, or an error on the side of Company I that meant Mr A did not receive the service in full as he was expecting.

So when deciding what I think most likely happened here, the evidence reviewed suggests that Company I were operating as a legitimate business at the time and that other factors have meant that the full tickets were not given to Mr A. I do not think that there is enough evidence to say that Company I set out from the beginning with the intention to defraud Mr A, and so I cannot safely conclude that Mr A has been the victim of a scam here. And so it follows that I cannot apply the CRM Code here, which may have otherwise entitled Mr A to a refund.

The CRM Code is not the only consideration here. In some instances, if a payment is sufficiently unusual or out of character for an account, a business may be expected to intervene. In this case Mr A did speak with Santander when he was making the purchase so they did have the opportunity to speak to him about the payment. But in this case, I do not think they had any reason to stop the payment as I do not think there was a scam to uncover here, and I do not think Mr A said anything that showed himself to be at risk of fraud or financial crime. So I do not think Santander ought to have done anything more in these circumstances.

I know this will be a huge disappointment to Mr A, but I do not think this situation meets the definition of an APP scam. I consider this to be a civil dispute. I sympathise with the position Mr A has found himself in, and I am in no way saying he did anything wrong or that he does not have a legitimate grievance against Company I. But this type of dispute is not something that is covered by the CRM Code, so I think Santander have acted fairly in declining to refund the losses under the CRM Code.

So, for the reasons I have explained above, I do not think it would be fair to hold Santander responsible for the money Mr A lost.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 November 2024.

Katherine Jones
Ombudsman