

The complaint

Mr I is unhappy that Santander UK Plc has decided not refund him after he disputed a payment he made from his account.

What happened

Mr I engaged the services of a barrister in December 2023. He signed a contract and agreed to pay non-refundable fees of £12,500. I won't go into the details as they are known to both parties but essentially Mr I's relationship with the barrister broke down. After communication with the barrister and following raising a complaint, Mr I says he received a refund £9,000.

Mr I, says he's suffered a loss of £3,500 and has been the victim of fraud. He says the barrister's Ltd company was dissolved in 2021 and was therefore trading fraudulently. Mr I also referred the matter to the Legal Ombudsman service in February 2024. And he reported the matter as fraud to the police, providing a copy of his witness statement to our service.

He believes Santander hasn't done anything to recover his money. He says this added to his stress and Santander hasn't followed the Contingent Reimbursement Model (CRM) code. He said Santander closed his case before it had considered the documents, he'd sent to the fraud team, and it is part of the conspiracy and scam.

Santander issued its final response, it said Mr I's claim was a civil matter and it wouldn't be refunding him.

One of our investigators looked into things. She didn't recommend that Santander refund Mr I. She said that his claim was a private civil dispute between him and the barrister, rather than an authorised push payment scam. And because of this his claim wasn't covered by the CRM code.

She concluded that Mr I had paid a legitimate barrister but acknowledged he had not received the service he paid for, in full. He had however, received a partial refund from the barrister. But breakdown of the relationship between them, did not mean that Mr I had been scammed. She considered that the company that Mr I dealt with was now dissolved, and Mr I was unhappy with the service he received, but this was not enough to say that he'd been scammed.

Mr I did not accept the investigators findings. He said he did not receive any service from the individual accused, and this has resulted in a financial loss. And the company he was paying was not legitimate. The company should not have issued a client care letter to him in December 2023 when it had been dissolved since 2021.

Mr I asked for an ombudsman to review his complaint and so it has been passed to me to consider.

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.

It's my role to consider, whether Santander is responsible to refund Mr I, when applying the Contingent Reimbursement Model (CRM) and other relevant industry guidance in deciding the outcome of this complaint.

The investigator set out a clear view, explaining why Mr I's claim is not covered by the CRM code and why Santander doesn't need to refund him in these circumstances. I agree with those findings. I'll explain why.

I agree that Mr I has not been the victim of an APP scam. That's not to take away that Mr I hasn't suffered a loss or, that he may have some dispute with the barrister he employed. But not all disputes will be enough to say that a bank is responsible for a consumer's losses. I need to see convincing evidence that Mr I has been the victim of an Authorised Push Payment (APP) scam, in order for that to be the case.

In other words, the CRM Code isn't a general protection for customers against non-receipt of goods or services. It only applies if it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met.

Below are the relevant sections of the CRM code.

APP Scam

Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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.*

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;*

In order for the consumer to have been the victim of an APP scam the consumer must have been deceived about the very purpose for which their payment has been procured. Here the purpose of the payment was to engage the barrister's services and Mr I signed an agreement to say the payment was non-refundable.

During the course of their dealings Mr I says the barrister did not fulfil the contract but that doesn't give rise to a situation where the barrister and Mr I had different purposes for the payment. It's clear that at the start of the contract the barrister intended to provide the services agreed and work started on this basis, with Mr I and the barrister engaging for several weeks before the relationship broke down. So, I've seen no evidence that the barrister didn't intend to do the work paid for from the outset.

One of Mr I's main concerns is that the barristers' Ltd company was dissolved at the point he entered into a contract. He therefore believes, the barrister was trading fraudulently. I've seen no evidence of this. I'll explain why.

This barrister is still called up to the bar and appears on the bar council website. As the barrister is self-employed they don't need to have a ltd company in order to offer their services. Although I appreciate that at some point this barrister did have a Ltd company this has since been dissolved. As far as I can see the barrister did not issue a client care letter under a Ltd company name but rather as a sole trader using the name of the chambers as their trading name. The client care letter Mr I has referred to does not refer to a Ltd company in any of the letters, contracts or website. The dissolution of the Ltd company has no bearing here. Although the Ltd company and sole trader names are the similar they are not the same entity. Mr I did not enter into a contract with the Ltd company, rather directly with the barrister under their sole trader name and he paid a bank account in the barristers name, not a Ltd company. And so I'm not persuaded there is any evidence of an fraud or scam occurring here.

Mr I has provided no other evidence to support he's been the victim of a scam. Any failure to fulfil the contract here (although I'm not concluding that has occurred here) does not amount to Mr I being scammed. This is a private civil dispute between him and the barrister. And so, on that basis I agree that Santander does not need to refund Mr I under the CRM code. And I find no other reason why Santander ought to refund him in this instance.

My final decision

I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 15 January 2025.

Sophia Smith
Ombudsman