

## The complaint

Mr S is unhappy that Santander UK Plc ('Santander') has decided not to refund the money he lost, to what he believed was an Authorised Push Payment ('APP') car purchase scam.

## What happened

The background to this complaint is well known to both parties. So, I won't repeat everything again in detail here, but in summary I understand it to be as follows.

In, or around February 2024, Mr S came across an individual whom I'll call 'L' selling a car through a well-known car selling platform. Mr S purchased an ex-hire car, paying £12,750 over two payments on 12 and 13 February 2024 (£5,000 and £7,750) from his Santander account to the details provided by L. Santander contacted Mr S in relation to the first payment of £5,000 he made. Mr S advised that a colleague had seen the car in person and checked it out and he had completed a Hire Purchase Investigation ('HPI') check. Mr S also advised that he would be paying a further £22,000 to L upon delivery.

Mr S says the car was delivered by L personally to Mr S's address.

Mr S has explained L then contacted him some months later, in early May 2024, advising that they had a high-end car for sale that had front end damage and needed repairs. The vehicle's cost, due to it needing repairs, was £125,000.

Mr S says the car was a dream car of his and he believed that he could purchase the car and save up and carry out the repairs over time.

Mr S says he was told there was interest in the car and a deposit was needed to hold the car. Mr S carried out some checks on the car, including a HPI check and contacting the manufacturer to check the Vehicle Identification Number ('VIN') and registration matched their records.

Satisfied, Mr S agreed and paid a 20% deposit - £25,000. Mr S made the payments from his Santander account, making a payment of £15,000 on 8 May 2024 and a further £10,000 payment on 11 May 2024. Mr S made the payments to the same account details he had paid previously.

Mr S has explained on the day of the delivery (14 May 2024) L advised they were having difficulty loading the car and that they had two cars to deliver to two different customers. Mr S says L then switched their mobile phone off.

Believing he had been the victim of a scam, Mr S reported the matter to Action Fraud. And he also reported the matter to Santander the following morning (on 15 May 2024). Mr S says that after a couple of days of him reporting it, L contacted him asking him to withdraw the case and that they will deliver the car or refund him. As he was told by Action Fraud and the bank to not communicate with the seller – he didn't respond. Sadly, it seems the car wasn't delivered, and Mr S didn't receive a refund of the deposit either.

Ultimately, Santander concluded that this was a buyer/seller civil dispute rather than a scam. And this was because Mr S had an existing relationship with the seller, having successfully purchased a car previously.

Mr S referred his complaint to our service and one of our Investigators didn't recommend it should be upheld. In summary, our Investigator thought Santander had acted fairly in reaching the decision it had. Mr S disagreed and remained of the opinion that he had been scammed as he had paid the deposit for the car, it wasn't delivered, and he hadn't been refunded.

So, as an agreement hasn't been reached, it has been passed to me for a final 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here which is whether Santander acted fairly in its answering of Mr S's complaint. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm sorry to hear of what's happened to Mr S. I can see he feels strongly about what has happened. But having considered everything, I can see no basis on which I can fairly require Santander to refund the money Mr S sent. I can appreciate that this outcome is not the one Mr S was hoping for, and I can understand why he wants to try and recover this money. But having thought about Santander's actions, I am unable to say it has responsibility for refunding the money Mr S sent. I will explain why.

In deciding what's fair and reasonable, I'm 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 would like to clarify at this point that Mr S has referred to Section 75 of The Consumer Credit Act 1974 – which allows for claims against the creditor when goods are not delivered as promised. However, this is in relation to credit card purchases and here Mr S made a faster payment. So, it isn't an applicable consideration.

The starting position in law is that Mr S will generally be considered liable for authorised payments. It's accepted that he authorised the faster payments in dispute and so he is liable for them in the first instance. However, Santander was a signatory to the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code which was in force at the time Mr S made the payments. Under the CRM Code, firms were expected to reimburse customers who had fallen victim to APP scams, subject to a number of exceptions.

However, the CRM Code is only relevant if I'm persuaded Mr S did fall victim to an APP scam. The CRM Code specifically excludes certain types of disputes. 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;”\**

\*Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Both Santander and our Investigator felt the payment Mr S made formed part of a buyer/seller dispute and, as such, is not covered by the CRM Code.

So, taking into consideration the above, I must first decide whether Mr S has likely been the victim of an APP scam or not. And whether Santander acted fairly, when concluding what had happened in the circumstances of this case amounted to a civil dispute and not an APP scam.

Having thought very carefully about Santander’s actions, I can’t say, based on the evidence available, that it acted unfairly in reaching the conclusion it did. I do appreciate how disappointing this will be for Mr S and I don’t underestimate his strength of feeling and acknowledge that he has been left out of pocket as a result. But not all instances where someone has not received goods or services means they have been the victim of fraud or a scam. And here, I don’t think I can fairly say Santander should reimburse him. I’ll explain why.

In order to be persuaded on balance that Mr S has been the victim of an APP scam I need to look to the definitions set out in the CRM Code, which says;

*“DS1(2)*

*(a) 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.”*

Looking at the above definition, I firstly need to consider the purpose of the payment and whether Mr S thought this purpose was legitimate. In this case, I’m satisfied he did. Mr S has explained that he believed the payment he was making was toward the purchase of a car. Then I need to consider the purpose the recipient (here that is L) had in mind, at the time of the payment, and whether this was broadly in line with what Mr L understood to be the purpose of the payment.

In the circumstances of this case, having reviewed all the testimony, information and evidence provided by both parties and from the beneficiary bank (the bank where the funds had been paid to), I can’t fairly and reasonably conclude that it was more likely than not that L set out with intent to defraud Mr S. I’m satisfied, on the balance of probabilities, that the intentions and purpose of the payment match here and I’m not as persuaded as I would need to be to say that L had fraudulent intent.

Obviously, I cannot know for sure what was in the mind of L at the time the payment was received. So as a result, I must infer what L's intentions were, based on the available evidence that I have had access to.

Mr S had previously bought a car from L. And there were seemingly no issues, with Mr S advising Santander that a colleague had checked the car out in person and L seemingly delivered the car to Mr S in person. From listening to the call recording Santander had with Mr S, when he made the first payment of £5,000 to L in February 2024, Mr S states that upon delivery he would be paying L a further £22,000. The car Mr S purchased from L initially was therefore around £27,000. So, Mr S had purchased a fairly bespoke (when considering the make and model) and not insignificantly priced second-hand car from L. And I am mindful that there were seemingly no issues with the car – such as it not being in the condition as described or it being damaged, cloned or stolen. By all accounts, Mr S had the car for some months before L contacted Mr S about the high-end car.

When I consider this, it suggests to me that L was in the business of buying and selling cars. Mr S considers the first sale was done in order to build trust and manipulate him into sending a deposit for the second car. I find it unlikely that a scammer would be in the business of buying and selling legitimate cars – whereby in this instance the first car was physically inspected by a colleague/friend of Mr S and with L also personally delivering the car – to then set out to scam someone for a deposit on another car being sold. Alongside this, the car purchased from L, was done so at a price that compared favourably with other similar vehicles. While under-pricing a car can be a tactic fraudsters use to 'bait' payments from their victims – it is not typical behaviour for fraudsters to then make delivery of the car, without any issues.

I note the beneficiary bank (where L's account was held) has provided our service with some information / comments about L. And it has done so in confidence – to allow our service to discharge our investigatory functions and to assist with the determination of this complaint. Due to data protection laws, our service can't share any information about the beneficiary or the receiving bank account. But from reviewing the information, I note that the beneficiary bank has advised that it hasn't had any other formal complaints about L, either prior to the payments Mr S made or subsequently. I think if L was a fraudster/scammer then it is likely that there would have been further reports made to it.

I am also mindful that Mr S has said that after reporting the matter, L reached out to say that they would either deliver the car or refund Mr S if he withdrew the fraud complaint. Clearly that didn't happen – and Mr S didn't receive the car or a refund. But I consider, if it was a fraudster, then they wouldn't necessarily have even taken that step. If the intention was to defraud, it's more likely that a fraudster would cease all communication after they had received the money.

I don't know why the car was never delivered nor why L chose not to refund Mr S. And I accept that there is a possibility that Mr S could have been the victim of a scam. But it is also possible that something went wrong between the parties which led to a breakdown in the relationship. And based on the evidence I have been presented with by all parties, with Mr S receiving a car that he had purchased previously and with the beneficiary bank advising there have been no other fraud reports raised, I don't think I can fairly and reasonably say Santander has treated Mr S unfairly when it concluded this was a civil matter between Mr S and L.

For the reasons I have explained, I'm satisfied Santander has acted fairly in concluding Mr S isn't due a refund under the CRM Code. Nor can I see there are other grounds on which I could say that Santander should fairly and reasonably bear the responsibility for refunding Mr S his losses. I don't think they could have prevented his loss when he made the payments, as Mr S was happy with the checks he had carried out and he had purchased a car from L previously. And as Santander deemed the matter a civil dispute there wasn't any recourse to recover the funds from the beneficiary bank.

I note that Mr S wants to do all he can to get back his deposit. And he has advised that he has no way of contacting L who ceased all communication. Financial institutions (in this case, that being the sending and receiving banks) often cooperate with any police investigation – and any information request they receive. So, Mr S may wish to explore his options here and seek to pursue L through civil means.

I also note Mr S says he was advised not to contact L by both Action Fraud and Santander. When a consumer indicates they have been the victim of a scam, that isn't unfair advice to be provided with – as all institutions would advise this, to minimise the risk of any further financial harm. However, as mentioned above, Mr S may wish to speak with the police in order to obtain contact details of L in order to pursue civil action.

If any further new material evidence comes to light that Mr S obtains or uncovers, and that he considers shows he was the victim of a scam by L, then that evidence should be provided to Santander in the first instance to allow it to reconsider Mr S's claim.

Finally, I can see Santander paid £25 as compensation for the level of service it provided in relation to a promised call back and misinformation. That seems fair, as overall I don't consider Santander's actions in investigating the complaint and deeming the matter a civil dispute was unfair. And I'm also mindful it investigated and provided its outcome to Mr S in a timely manner overall.

I'm sympathetic to the position Mr S finds himself in and I am sorry to have to deliver this news to him. I can see he strongly considers he was let down by L and is now out of pocket as a result. But, for the reasons I have explained, I cannot fairly say Santander should reasonably be held responsible for refunding him the money he paid. I don't consider Santander acted unfairly in considering the matter a civil dispute (which isn't covered by the CRM Code) and is therefore something that needs to be resolved between the two parties through alternative methods.

### **My final decision**

For the reasons explained, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 September 2025.

Matthew Horner  
**Ombudsman**