

The complaint

Mr A is unhappy Santander UK Plc won't refund money he lost as a result of a scam.

What happened

In March 2023, Mr A was looking to purchase a mobile phone. He found a suitable device on a popular online marketplace. The phone was advertised at £1,000 but reduced to £650. The advert was marked as 'postal only'.

Mr A asked for the best price as well as the IMEI number of the phone. The seller advised he could sell the phone for £600. Mr A agreed that he'd pay a deposit before the phone was delivered and the rest of the money once the phone was received.

After paying the deposit of £200, the seller demanded more money in order to send the phone. Mr A eventually suspected he'd been scammed and reported the matter to Santander. It considered his case under the Contingent Reimbursement Model Code ("CRM Code"), which requires signatories like Santander to reimburse victims of APP scams in all but a limited number of circumstances. In this case, it said that it had provided warnings to Mr A and he hadn't taken sufficient care when making the payment.

Mr A referred the complaint to our service, but one of our Investigators didn't uphold it. They agreed that Santander could rely on one of the exceptions to reimbursement set out in the CRM Code – namely that Mr A lacked a reasonable basis for believing that the seller was legitimate. They thought that there were several warning signs that Mr A should have picked up on:

- The price of the phone was too good to be true and the explanation given by the seller (that it was an unwanted gift) didn't sufficiently explain the price reduction.
- Mr A should have had concerns about the fact the item was listed as 'postage only'. This indicated that the seller didn't want to meet in person and should have raised suspicions.
- Mr A asked the seller to take a selfie with the phone, but the seller refused.
- Mr A identified that the IMEI number didn't match the phone that was being sold.
- The seller agreed to post the item with Mr A only having paid a deposit. They also didn't charge for postage, despite the phone's already heavily reduced price.
- The seller offered to take payment through a method of payment which can provide more protection, but Mr A didn't opt for this.
- Mr A didn't ask further questions about the phone until after he'd made the payment.

Mr A disagreed with the Investigator's view. In summary, he said:

- He was able to find the same make and model of phone in a similar condition for £700-800 on the websites of legitimate retailers. The seller said that he needed the money to pay debts and that the phone had been received as a wedding gift. The seller's social media profile picture showed him getting married – which seemed to support the seller's claims.

- The seller lived in a rural location, so it wasn't implausible that he'd need to post the item. The seller's social media pictures appeared to be consistent with someone living in that area.
- The social media profile also had a significant number of 'friends' and had been active since 2008. As the name on the bank account matched the social media profile, he believed the seller to be legitimate.
- It isn't unusual that the seller wouldn't charge anything for postage, which doesn't cost very much anyway.
- There were other items for sale on his social media profile and he had good reviews.
- The IMEI number did, in fact, match up, Mr A had just made a mistake with one of the digits when he initially checked it.
- He didn't know that the alternative method of payment offered more protection.
- The police said that the scam was very sophisticated as the name on the recipient bank account matched that of the person on the social media profile. So the fraudster must have committed identity theft in order to carry out the fraud.

As no agreement could be reached, the case was 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 sorry that Mr A has lost out here – I don't doubt that he's made a payment and received nothing in return. But I don't think that Santander have made an error declining his claim. I'll explain why.

The starting point in law is that Mr A is responsible for payments he's authorised himself. But the CRM Code changes that position – in order to decline a claim a firm needs to show that one of the exceptions to reimbursement applies.

In this case, Santander seeks to rely on two such exceptions – first, that Mr A ignored an 'Effective Warning' and second, that he made the payments:

'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.'*

I think Santander can fairly rely on the latter exception, so I won't consider both.

I'm satisfied that the price of the phone should have caused Mr A some concern. He acknowledges that it was cheaper than the phones he could find listed elsewhere. I think it was substantially cheaper – perhaps as little as half the retail price at the time (though the price appears to have reduced since then).

Mr A says the seller needed a quick sale because the phone was an unwanted wedding gift and the seller needed to pay some debts. But, I'm not sure this explains why the price would be so low. I suspect that, if genuine, the seller could have achieved a similar price by simply taking the phone to a shop that buys second hand phones.

I accept Mr A's evidence around the IMEI number – I can see that it did match the handset, though clearly that doesn't demonstrate that the seller actually had possession of the phone (and not just a picture of the phone box).

Like the Investigator, I'm concerned that the listing was described as postal only. While the seller lived far away from Mr A – he didn't live (or claim to live) in a very isolated location – seemingly living just a few miles from several large towns. Ultimately, the online marketplace offers no protection for either buyer or seller and is essentially a classified adverts service. The only real protection against fraud is to view goods in person before handing over any money. Arrangements like the one Mr A made rely entirely on the honesty of the parties involved. So, the fact the advert made it clear that the phone could not be viewed or purchased in person ought to have given Mr A further grounds to be concerned.

I've also seen evidence that Santander provided warnings to Mr A that were specific to the type of scam he was falling victim to. Those warnings told him, among other things, that he risked losing his money if he paid before receiving an item, that he should avoid paying by bank transfer and should explore alternative payment options (which as noted, appeared to be offered by the seller). Those warnings also mentioned being cautious about a price that was too good to be true and suggested seeing an item in person. I think these warnings ought to have resonated with Mr A.

In reaching my decision, I've considered that the name on the social media profile of the fraudster seems to have matched the name on the account Mr A paid (and this would have been known to Mr A at the time, due to a positive 'Confirmation of Payee' match). And, that Mr A seems to have been satisfied by what he saw on the seller's social media profile. But, even if the seller wasn't lying about who they were (and, though I note what Mr A has said about the police investigation, I think that's a real possibility here) that would provide Mr A with little protection against being scammed. The seller would still be a stranger, living over a hundred miles from Mr A and, if things went wrong, he'd have difficulty getting his money back.

I know this will be disappointing for Mr A but I think he was tempted by a price that was too good to be true. I think that caused him to pay the deposit despite the clear risk that the seller wouldn't provide the phone and wasn't legitimate. That means I think Santander acted fairly when it declined his claim under the CRM Code.

Finally I can see that Santander contacted the bank which received Mr A's money very soon after the scam was reported, but that bank did not return any of the funds. I'm satisfied that Santander acted reasonably in its attempts to recover Mr A's money.

My final decision

For the reasons I've explained, 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 7 March 2024.

Rich Drury
Ombudsman