

## Complaint

Mr I is unhappy that Santander UK Plc didn't reimburse him after he told it he'd fallen victim to a scam.

## Background

In late 2021, Mr I entered into an agreement with a limited company, which I'll refer to as P. Mr I was told that P specialised in the leasing of cars. He believed that he was going to establish himself as one of its franchisees. He also agreed to lease a car directly through P for personal use. In December 2021, he made two payments to P of £2,700 and £520 respectively.

Mr I was dealing with one of P's directors, Mr B. After Mr I had made these payments, he tells me that Mr B became evasive. He had made assurances about sending over a written contract to codify the franchise agreement Mr I believed he was entering into. Mr B began ignoring telephone calls from Mr I. As a result, in January 2022, Mr I emailed P and said he wanted to withdraw from the agreement. P said that Mr I could expect to receive a refund within 3 to 5 working days. He received a refund of the £520 payment, but not the remainder.

Mr I told Santander that he'd fallen victim to a scam. Santander looked into things but it didn't agree to reimburse him. It considered that he had a civil dispute with P, rather than being the victim of an authorised push payment (APP) scam. It wrote:

*"... as you have willingly made the payments therefore Santander cannot be held liable for any loss ... You were making a legitimate payment for a service and the company exists. It is suggested that a small claims court is more appropriate in this case."*

Mr I was unhappy with the response he received from Santander and so he referred his complaint to this service. It was looked at by an Investigator who upheld it. The Investigator was satisfied that the evidence suggested Mr I had fallen victim to a scam. As a result, she concluded that it was covered by the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. She thought Santander ought to have reimbursed Mr I under the provisions of the code.

Santander disagreed with the Investigator's opinion. It reiterated its view that the dispute was civil in nature. It pointed out that P is still active on the Companies House register. Although Mr I was dealing with a specific person who is no longer a director of P, the fact that P is still trading means he could pursue the return of funds directly with the company.

Because Santander disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

## Findings

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account.

However, that isn't the end of the story. Santander is a signatory to the CRM code. This code requires firms to reimburse customers who have been the victim of Authorised Push Payment ("APP") Scams in all but a limited number of circumstances. Not all payments are covered by the code. For a payment to be covered, it must meet the relevant parts of the Code's definition of an APP Scam:

*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 [...] the Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

The CRM Code also says at DS2(2)(b) that it doesn't 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."*

To say that the payments are covered by the Code, I need to be persuaded that it's more likely than not that Mr I is the victim of an APP scam, rather than being involved in some other type of dispute – in other words, that the purpose for which P procured these payments was fraudulent. He doesn't need to have demonstrated that beyond all reasonable doubt – the relevant evidential standard that is applicable to cases brought to this service is the balance of probabilities. However, given the serious nature of the allegations involved, I consider that this must involve convincing evidence to lead me to find it more likely than not the recipient procured the payment for purposes that were fraudulent.

I've considered the available evidence and I'm satisfied it does meet this threshold. Mr I is not the only person who claims to have fallen victim to a scam as a result of dealing with P. There are several other examples of reviews online that indicate it has had dealings with other customers who consider its activities to be fraudulent. Furthermore, this service has dealt with at least one other case involving P. The evidence in that case was indicative that the operation was a fraudulent one. The complainant had leased a car through P. However, they later discovered that P didn't have legal title to the vehicle. Instead, P itself had leased the vehicle via a mainstream car rental company before passing the vehicle on to their own customer. It seems likely that the purpose of doing this was to demonstrate the legitimacy and viability of the underlying business to potential franchisees.

Santander has attached a great deal of significance to the fact that the company appears on the Companies House register and is, according to those records, still trading. However, its filings with Companies House indicate that the business has never had an income, any assets or employees. This is despite the fact that we know that it ostensibly did trade during this time, because it took a franchise fee from Mr I and hasn't refunded it.

Santander has also suggested that, since the company is still trading, Mr I could pursue a claim against it in the civil courts. But the Companies House records show that the company has no assets. Even if Mr I were to make a successful claim in the civil courts, there would be no point in seeking to enforce it against an insolvent company.

I accept that this is a finely balanced issue, particularly given the relatively limited evidence that is available. Nonetheless, I'm satisfied that the weight of that evidence supports Mr I's

claim that he's fallen victim to an APP scam and so the payment is covered by the CRM Code.

Having established that the payments are covered by the code, I've considered whether any of the relevant exceptions to reimbursement were applicable. The code allows a firm to not reimburse a customer if it can establish that:

- *"The customer ignored an effective warning in relation to the payment being made; or"*
- *"The customer made the payment without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate."*<sup>1</sup>

No evidence has been submitted to show that a warning was shown to Mr I during the payment process, so I'm satisfied that the first exception doesn't apply. I've also considered the second exception to reimbursement. It's worth noting that the way that the relevant test is written in the code isn't entirely objective. It allows me to take into consideration the characteristics of the customer when deciding whether their belief was reasonable or not.

Overall, I'm persuaded that Mr I did have a reasonable basis for believing that P was a legitimate business. He appears to have had fairly detailed conversations with Mr B which suggested that he was taking the prospect of franchising his business seriously. Furthermore, at the point at which he made the payments, one of Mr I's relatives believed that they'd entered into a legitimate leasing agreement with P. This will have strengthened Mr I's belief that this was a genuine company.

I think Mr I could've been more cautious about transferring funds before the agreement had been formalised. However, in the context of his relative inexperience in matters like these and the fact that the other available signs indicated this was above board, I don't think this means he made the payment without a reasonable basis for believing that P was a legitimate business. As a result, I'm persuaded that Santander should have reimbursed him under the Code.

### **Final decision**

For the reasons I've explained above, I uphold this complaint.

If Mr I accepts my final decision, Santander UK Plc should:

- Refund the money Mr I lost to the scam, less the amount that was refunded.
- Add 8% simple interest per annum to that sum calculated to run from the date it declined his claim under the CRM Code until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 19 June 2024.

James Kimmitt  
**Ombudsman**

---

<sup>1</sup> There are other exceptions in the Code, but they aren't applicable here.