

The complaint

Mr F complains that Santander UK Plc (Santander) won't refund money he lost in a scam.

What happened

What Mr F says:

Mr F was accepted for a place to study abroad and needed to find somewhere to live. He looked on various websites for accommodation and was then contacted by someone on Facebook who put him in contact with a 'landlord' who had some accommodation to rent. Mr F contacted the landlord, who provided photos of the flat on offer.

Mr F agreed to go ahead and rent the apartment. He signed the rental agreement and made the following payments from his Santander account.

	Date	Payment	Amount
1	8 June 2022	Online international payment to 'landlord' – in euros	£439.90
2	10 June 2022	Online international payment to 'landlord' – in euros	£440.93
3	22 June 2022	Online international payment to 'social office' – in euros	£695.56
4	28 June 2022	Online international payment to 'landlord' – in euros	£884.93
5	23 August 2022	Online international payment to 'landlord' – in euros	£307.05
6	23 August 2022	Online international payment to 'landlord' – in euros	£130.33
	Total		£2,898.70

The first two payments were for the first two month's rent. He was then asked to make a payment for insurance to the 'social office' – the third payment. He was then asked to make a fourth payment (being two months' rent). This was said to be also for 'insurance' – as he was from a foreign country.

Just before he was due to move in the landlord asked him for two further payments (the fifth and sixth payments). He was so close to moving in and was about to commence studies – and had nowhere else to live – so he felt he had to comply with the further request.

He turned up at the apartment and no one was there. There was silence from the 'landlord'. He therefore had nowhere to live and had to find other accommodation quickly - which cost much more.

Mr F contacted Santander on 26 August 2022. He said the payments were unusual and Santander should've protected him and helped him. If they had done so, they could've seen the circumstances of what was happening and seen it was a scam. He said Santander should refund the money he's lost.

What Santander said:

Santander said Mr F had authorised the payments. His losses weren't covered by the Contingent Reimbursement Model Code (CRM Code) – as they were international payments. So, Santander didn't refund the payments.

Our investigation so far:

Mr F brought his complaint to us. Our investigator upheld it. She said Santander should refund the fourth, fifth and sixth payments – as it was unusual for Mr F to make such international payments. But she also said Mr F should be responsible for half of the losses – as he could've done more to protect himself. So she said Santander should refund 50% of the payments, plus interest at 8% per annum simple.

Santander didn't agree. The bank said the payments were made over a two-month period and the amounts paid weren't out of character. And Mr F had authorised the payments himself.

Because Santander didn't agree, Mr F's complaint has come to me to look at and make a decision.

I reached a provisional decision which said:

I'm sorry to hear that Mr F has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr F didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether Santander acted fairly and reasonably in its dealings with Mr F when he made the payments, or whether it should have done more than it did. I have

considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to faster payments made to a UK beneficiary – and in this case, the payments were made to an overseas account.

The first consideration here is: if the payments were of a sufficient size and were out of character with how Mr F normally used his account – then we would expect Santander to have intervened and spoken to Mr F about them. I looked at Mr F's account, and it's fair to say that the payments were unusual compared to the way in which he used his account – which was to make day to day expenditures of low value. I looked at his account from November 2021, and there were regular debit card payments – but all in the UK and for amounts less than £50.

But most importantly, there's a balance to be made: Santander has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. And here – these were relatively low value payments. And they were made over a period of two months – which isn't a typical of a scam. I say that as normally, scam payments are made in rapid succession and over only a few days.

Therefore, in this case, I think Santander acted reasonably in processing the payments – I don't think that I could reasonably say that Santander should have stopped the payments for further checks.

So, I don't hold Santander as liable to refund the payments. And the question of whether Mr F is partially liable (as our investigator said) isn't relevant here – I think that unfortunately, he is liable for the full amount of the money he paid.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Santander took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. This is an important part of the process of protecting customers from losses when a scam takes place.

I can see from Santander's notes that Mr F contacted the bank on 26 August 2022. Santander contacted the recipient bank on the same day. Much later on – in December 2022, Santander received a response from that bank saying 'partial funds remain' and were held in the beneficiary's account. The bank asked for a police report and an indemnity from Santander to consider reimbursement. This would be normal in cases where overseas banks are involved in such scams – there is no obligation of those banks to return money lost in scams.

We asked Santander more about this – and they couldn't tell us if they'd contacted Mr F to ask for a police report or not. I couldn't see any reference in Santander's notes that they had – so I'm persuaded they didn't follow this up with Mr F.

So here, I need to consider if it's likely if any refund could've been achieved. We don't know how much remained in the account of course or whether the bank would've agreed to pay the money back. But on balance, given the passage of time – I think it's unlikely that any significant money would've been paid back.

But because Santander should've followed this up with Mr F, and didn't, I think it's only fair and reasonable that the bank pay some compensation to Mr F. And I think £300 is an

appropriate amount.

Guidance on our criteria for awards of compensation can be found at:

<https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience>

I know Mr F was looking to get a full refund (and not only the compensation of £300) and will be disappointed by this provisional decision. He has lost a lot of money, which he can't afford to do. But having reviewed what happened here, I'm satisfied that this provisional decision is fair.

Responses to the provisional decision:

Santander had no further comments to make. Mr F accepted the findings.

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.

As Mr F accepted the findings, and Santander had no further comments, my final decision is unchanged from the provisional decision.

My final decision

I uphold this complaint. Santander UK Plc must:

- Pay compensation of £300 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 May 2024.

Martin Lord
Ombudsman