

## **complaint**

Mr B complains that Santander UK plc has given him conflicting information and has not done enough to help him get back money that he paid by mistake to one of its customers.

## **background**

I set out the background to this complaint in my provisional decision. I also explained why I proposed to uphold the complaint. In summary, I concluded that:

- Mr B made a mistake when he sent money from his account with another bank to a Santander account. He got some of the digits in the account number wrong. As a result, the money went to an account it was not intended for. I was satisfied that Santander had done nothing wrong in crediting the money to the account it did.
- However, I did not consider Santander had done enough to assist Mr B after he told it what had happened. While it wrote to its customer, it did not do any more. I considered it would have been reasonable for Santander to have taken steps to safeguard the money and prevent its customer from accessing it while it looked into the matter. I saw no reason why it could not have done so.
- The money was still in the unintended recipient's account when Mr B alerted Santander to what had happened. But Mr B had been unable to recover it because Santander did not safeguard or ring-fence it.
- I did not consider it fair that Mr B should lose the benefit of the money to a third party who was clearly not entitled to it and who Santander could have prevented from spending it.
- I considered that Santander should reimburse Mr B with the money he lost, plus interest. It was for Santander to decide whether to seek to recover the money from the third party and on what terms. I also proposed to require Santander to pay Mr B £100 by way of compensation.

I invited the parties to let me have further submissions, if they wished, in advance of my finally determining the matter.

Santander did not accept my provisional decision. It referred to case law and said, in summary:

- The judgment it referred to was against both the receiving bank and the recipient of the money. While it can take steps to recover the money from its customer, it believes that was not the intention of the court in the judgment.
- It is reviewing its process when mistakes like this happen. But the steps it took here in contacting its customer were in line with current industry standards.
- Mr B could have mitigated his loss by taking legal advice.
- Interest at 8% is disproportionate and inappropriate.

Mr B said he had nothing more to add, other than that he was unhappy with Santander's further delay.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Having considered Santander's further comments, I remain of the view that it would have been reasonable for it to have taken steps to safeguard the money in these particular circumstances. Santander has given no reason why it could not have done so and, because it did not, Mr B has been unable to recover his money.

The recipient of the money is not party to this complaint and I cannot make an order or award requiring them to repay the money. That is a matter for Santander. There was no particular obligation on Mr B to take legal advice, and I do not see that his decision not to do so is a failure on his part to mitigate his losses.

Santander has disputed the 8% simple interest that I have said should be applied from the date it was alerted to the problem until the date of settlement. The 8% figure is not intended to be an interest rate in the way that a bank deposit account pays interest. It is a rate which I consider to be a fair yardstick for compensating consumers for a wide range of possible losses and lost opportunities. And it is a rate often (but not always) used by the courts in not dissimilar situations. Bearing all of this in mind, and again taking account of the particular circumstances of this complaint, I consider that the 8% simple rate is fair and reasonable.

I can understand Mr B's frustration that Santander took a little longer than it should have done to respond to my provisional decision. It is disappointing that there was some delay, and it is not clear why this happened. Nonetheless, I do not find that it affects my overall conclusions in the circumstances.

## **my final decision**

My final decision is that I uphold this complaint. In full and final settlement of it, I order Santander UK plc to pay Mr B:

- 1) £4,500, plus simple interest on that sum at a rate of 8% per year, from 8 June 2011 (when it was alerted to the problem) to the date of settlement; and
- 2) £100 compensation to reflect the distress and inconvenience he has been caused as a result of its handling of the whole matter.

If Santander considers it should deduct tax from the interest element of my award, it should provide Mr B with the appropriate tax deduction certificate when making payment.

Janet Millington  
**ombudsman**