

The complaint

Mr F complains that Santander Consumer (UK) Plc is asking him to repay money he doesn't owe in respect of a conditional sale agreement.

What happened

Mr F took out a conditional sale agreement with Santander Consumer (UK) Plc ("Santander") in September 2020. In July 2022, Mr F arranged to settle the agreement through a third party. The settlement figure was £2,532.60. The third party contacted Santander the following month advising them that they'd paid the settlement figure twice in error. Santander refunded Mr F the extra £2,532.60 instead of returning this to the third party.

Santander says they tried to contact Mr F to explain that they'd made an error and to ask him to return the money however they were unable to do so. Santander re-activated Mr F's agreement so they could send the third party the money back to them using the payments that Mr F had previously made.

Mr F says he spoke to Santander after he'd noticed the money crediting his bank account and they told him that this was what he was owed. Mr F says he waited for a month and a half in case Santander took the money back and, as they didn't, he used it.

Mr F complained to Santander as they'd asked him to repay the money which he didn't think was right. Santander didn't uphold the complaint. They said to Mr F that they sent him the money in error and had tried to contact him on several occasions to ask him to return this. Santander also said Mr F subsequently e-mailed them saying he wouldn't be returning the payment as what had happened wasn't his fault.

Our investigator didn't recommend the complaint should be upheld. She thought it was fair for Santander to ask Mr F to refund the money.

Mr F didn't agree and said he'd received letters from Santander saying the finance agreement had been settled and the money they'd sent him was an overpayment that was due to him. Mr F also said he'd spoken to Santander and was told this was money he was owed. And he said he'd spoken to the debt recovery agent appointed by Santander who'd told him they wouldn't be asking him for the money. Mr F also pointed out that Santander were asking him to pay different amounts in each letter they were now sending him.

The complaint has been passed to me for a 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.

It's clear from what I've seen that the third party sent the money needed to settle Mr F's agreement to Santander twice in error. Santander then credited Mr F's bank account with the second amount they'd received from the third party. Mr F's complaint ultimately is whether

it's reasonable for Santander to seek to reclaim that money from him.

Generally, I think if someone is paid money in error, then it's likely to be reasonable for them to return it. The reasonableness of that though will depend on the circumstances.

I've firstly considered how Santander acted once they realised they'd been sent the money in error and when they subsequently sent that on to Mr F. I can see from a screenshot that Mr F sent to us of his bank account, that Santander credited his account with this money on 24 August 2022. I've looked at Santander's account history notes and can see they tried to call Mr F on 9 September 2022 and 13 September 2022 about what had happened but the number they called was invalid. I've also seen a copy of the e-mail that Santander sent Mr F on 9 September 2022 asking him to contact them about 'an important query' in relation to his agreement. I'm satisfied therefore that Santander did take reasonable steps to try to discuss what had happened with Mr F and, while it appears that the phone number they used was invalid, I've not seen evidence that they called a wrong number or didn't try to call the number they held for Mr F.

Mr F has highlighted that Santander sent him a letter saying the money they sent him was an overpayment. So, he feels that Santander clearly said this was money owed to him. I've seen a copy of this letter and agree with Mr F that this said the money being credited to him was an overpayment. However, I think it unlikely that Mr F would have known he was owed this amount as he'd have been aware he was settling his finance agreement early before all payments due under this was being repaid. I can't therefore see how Mr F would have reasonably felt this was money he was owed. And, from what I've seen, I don't agree that this was money he was owed. I find it clear from the evidence that's been provided that Santander sent Mr F the money in error when they should have returned this to the third party.

Mr F says he called Santander when he received the letter about the overpayment and was told this was money due to him. I've not though seen sufficient evidence this conversation happened. There's no record of a phone call in Santander's account history notes that supports this, and Mr F hasn't been able to provide us with supporting evidence of when he made that call.

So, I don't think there's any reasonable basis for me to say that Santander were wrong to ask Mr F to return the money they paid him. It's clear to me that Santander made an error in sending Mr F the money. But I don't think it reasonable that Santander now writes this amount off because of their error. I don't therefore find that Santander is acting unreasonably in trying to recover the money from Mr F. So, it follows that I don't uphold Mr F's complaint.

I do have some slight reservations around the decision Santander made to reactivate Mr F's finance agreement bearing in mind it was their error that ultimately caused this dispute and when the intention on Mr F's part was clearly to settle this agreement. In my view, this has led to not particularly clear information being sent to Mr F about the amount he needs to repay. Essentially, what Santander wanted repaying was the £2,532.60 they sent Mr F in error. The letters Mr F has received since shows him being asked to repay various arrears amounts and I don't think that has particularly helped the situation.

I therefore suggest to Santander that they set out clearly to Mr F what he owes them and work with him to repay this fairly and reasonably. I would add here that Santander should give some thought around the reasonableness of continuing to apply arrears fees each month as this is increasing the amount that Mr F owes, when this ultimately stems from the error they made. There will also come a point where Santander will need to rethink what to do with the agreement if, for example, Mr F decides he doesn't want to pay Santander.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 29 September 2023.

Daniel Picken
Ombudsman