

The complaint

Mr H complains that Santander UK Plc won't refund a transaction he didn't authorise.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr H had an account with Santander. On 1 February 2023, £1,146.61 was taken from his account by a merchant I'll refer to as "W".

Mr H contacted Santander to tell it he didn't make or authorise the payment and he hadn't had any dealings with W. Santander issued a temporary refund and investigated the claim. But on 25 July 2023, it wrote to Mr H to let him know the claim had been rejected and it would be taking back the payment, which it did on 8 August 2023.

When Mr H contacted Santander to complain, it said there was no error on its part. It explained that when raising a claim under the dispute or chargeback scheme it does so on a best endeavours basis. It said the dispute case was declined as the service was used, and the fraud/scam case was also declined.

Mr H wasn't satisfied and so he complained to this service explaining that he thought a third-party had booked an airline ticket without his authorisation.

Our investigator felt the complaint should be upheld. She explained that generally speaking, under the Payment Service Regulations 2017 (PSRs 2017), Santander is required to refund any unauthorised payments made from Mr H's account. She said that Santander hadn't provided any evidence in support of its conclusion that Mr H authorised the payment and as she had no reason to doubt what Mr H had said, she thought it had acted unfairly by rejecting the claim and taking back the refund.

Santander hasn't responded to the complaint and so it had been passed to me to consider.

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.

Having done so, I've reached the same conclusion as our investigator. And for largely the same reasons.

Our investigator has made several requests to Santander for information from Santander, but it didn't respond to those requests and so I must base my decision on the limited information I do have.

Chargeback is a voluntary scheme which is operated by some card issuers and it is dealt with under the applicable cards' rules. The option to raise a chargeback is available in a range of circumstances where there's a dispute between a cardholder and a merchant.

There's no automatic right to a chargeback. But as a general rule, we say it's fair to expect a card issuer to attempt a chargeback if there's a reasonable prospect that it will succeed.

In order to raise a chargeback in this particular case, Santander needed to cite one of the specific reasons set out in the scheme rules. The chargeback rules state that if a chargeback is defended, the card issuer can make a second presentation of the chargeback by providing further supporting evidence. If it is still defended by the merchant, it can ask the card scheme provider to decide whether a refund should be given. This final part of the chargeback process is called arbitration. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed.

Our role in such cases is not to second-guess the arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Santander) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder. We would consider it good practice for a chargeback to be attempted where the rights exist and there is some prospect of success.

Santander did initially tell Mr H that it would raise a chargeback dispute on his behalf. However, it later told him that it had decided not to pursue the claim and in its final response, it stated this was because 'the service was used'.

Santander doesn't have to pursue a claim that it doesn't think will be successful, but I'm not satisfied that it has shown that there wasn't a reasonable prospect of a successful chargeback or that it acted reasonably in not pursuing the claim and taking back the refund. Because of this, I agree with our investigator that it should refund the disputed payment to Mr H.

My final decision

My final decision is that Santander UK Plc should:

- Pay Mr H £1,146.61.
- The settlement should include 8% simple interest calculated from the date Santander took back the temporary refund to date of settlement.

*If Santander UK Plc deducts tax in relation to the interest element of this award it should provide Mr H with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 January 2024.

Carolyn Bonnell
Ombudsman