

The complaint

Mr S complains Santander UK Plc (“Santander”) failed to claim back payments made on his debit card to an online bookmaker.

What happened

I issued a provisional decision on Mr S’s complaint on 18 April 2024, in which I set out the background to the case, and my provisional findings on it. A copy of my provisional decision is appended to, and forms a part of, this final decision, and for this reason it’s not necessary for me to go into great detail about how the complaint came about, but in brief summary:

- Mr S’s Santander debit card was blocked when making one of a series of transactions to an online bookmaker, “B”, on 1 May 2021. He said this prevented him from playing in the final of a poker tournament, where he’d have been guaranteed a share of the pot. The complaint I am deciding is not about the card being blocked, but about Santander’s handling of a request from Mr S to dispute other payments he made to B the same day.
- Mr S wanted Santander to dispute various payments he had made to B on his debit card, on the grounds he hadn’t got what he paid for. He was unhappy with how the bank had handled his requests for this.
- Santander accepted there had been shortcomings in how it had handled matters, and this meant it had missed the opportunity to dispute the payments within the window of time allowed under the card scheme rules. It paid Mr S £200 compensation in respect of this, and £50 compensation for leaving him on hold on the phone numerous times.
- The bank did eventually dispute the transactions in question. B responded to the dispute to say it felt Mr S was making a “false claim” and that all the transactions had been used to fund his account with it and spent on various games. It said Mr S had never played poker with it in 2021. Santander decided not to take the dispute any further after receiving this response. Mr S complained about this decision, and remained unhappy about the service he’d received from the bank.

In my provisional decision I said that I didn’t think Mr S’s complaint should be upheld. I reasoned the following:

- It was possible for a card issuer to dispute payments made on a card via the mechanism often referred to as “chargeback”. The rules for chargebacks were made by the relevant card scheme, which was Mastercard in this case.
- Santander had missed the opportunity to dispute the payments in the timeframe allowed under Mastercard’s rules. It was therefore necessary to consider what would have happened, had the bank disputed the payments within the allowed timeframe.
- Based on what Mr S had said about *why* he wanted to dispute the payments,

Santander would have needed to raise “Cardholder Dispute” chargebacks under the Mastercard rules. There were restrictions on this sort of chargeback where the transactions in dispute were deposits made to accounts with online bookmakers. Most importantly, the rules said that a chargeback could only be raised if the deposited funds had never appeared in the online account, and that the merchant (i.e. B in this case) could defend the chargeback by evidencing that the corresponding value had appeared in or been transferred to the cardholder’s account with it.

- When Santander had belatedly attempted to dispute the payments to B, B had provided a response which included evidence that I thought would have satisfied Mastercard’s requirements to defend the chargeback. I acknowledged that Mr S had concerns this evidence wasn’t genuine, but I thought it was more likely to be genuine than not.
- I therefore had to conclude that had Santander raised a dispute via the Mastercard system in or around May 2021, this would have been unlikely to have been successful. I thought B would have defended it, for the same reasons it did later on. I said that it wouldn’t be fair or reasonable to require the bank to reimburse these amounts to Mr S, given he would not have obtained a refund even if it had acted correctly at the time.
- Santander’s customer service had been deficient at times and it hadn’t provided clear or accurate information to Mr S in a timely manner. It accepted it had left Mr S on hold on numerous occasions. I thought the £250 total compensation already paid by the bank was fair in the circumstances to reflect the impact of these failings.

I invited both parties to comment on my provisional decision. Santander has failed to respond. Mr S has responded to express his disagreement with it. I think I could summarise his key points as follows:

- He is sure that the evidence which Santander said it had received from B when it raised the dispute, was completely fake. He said he’d contacted B and it had told him it had never heard from Santander about his account. He also had five witnesses who had been in the same poker tournament who were willing to sign an affidavit. He reiterated that the email address on the evidence purporting to be from B, was not an email address he used for B’s services. It was for us to prove the evidence was genuine, not for him to prove that it was not genuine.
- His complaint had to be upheld because Santander had failed to raise a dispute as requested. The bank had even admitted its failure in this regard, so it didn’t make any sense that his complaint would not be upheld.

The case has now been returned to me to review once more.

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, my findings are unchanged from those set out in my provisional decision, but I think it’s important that I address the points made by Mr S.

The reason why I said that I did not think Mr S’s complaint should be upheld, was not because I thought Santander had done everything right. Indeed, I was critical of the

customer service the bank provided. It was because I considered Santander had already done enough to resolve the complaint by paying him £250 compensation.

Having considered again the evidence Santander says is from B, and which Mr S has continued to challenge on the basis he considers it is fake, I see no reason to depart from the finding I reached in my provisional decision – which was that the evidence is more likely to be genuine than not based on the information I have. I don't think any of the points Mr S has made tip the scales far enough in the other direction. He has said the wrong email address is present on the document, however I note various other aliases are mentioned on the document – one of which appears to correspond with the email address he has used in communication with us – and Mr S has not challenged these. Mr S has questioned the professionalism of how the document is written and presented. I agree the document appears to contain typos and some of it is difficult to read, but in my experience the quality of responses to disputes/chargebacks is widely variable and nothing about the way this particular document is written suggests to me that it isn't genuine. Mr S says he has spoken to B, but he has not provided any documentary evidence from B, for example, which casts doubt on the provenance of the response to the dispute.

Overall, having considered all of Mr S's further points I remain of the view that, had Santander disputed the transactions in May 2021, B would likely have defended the disputes for the same reasons, and provided the same evidence that it did later on. On balance, I think this evidence was genuine.

As I explained in my provisional decision, the *only* grounds on which Santander could have disputed the payments under the Mastercard rules, given they were deposits into an account with an online bookmaker, was if they had failed to appear in Mr S's account with B. I think B's evidence showed, on the face of it, that the deposits were made successfully, and this would have been enough to defend the disputes under Mastercard's rules. There was therefore no reasonable prospect of Santander being able to recover the payments from B for Mr S, and so while the bank may have acted incorrectly in failing to raise the disputes in a timely way, this didn't make a difference in terms of whether or not Mr S would have got the money back.

My findings regarding the customer service provided by Santander remain the same as outlined in my provisional decision, for the same reasons. I remain of the view that, overall, £250 compensation was a fair amount to reflect the impact of the bank's customer service failings.

My final decision

For the reasons explained above, and in my appended provisional decision, I do not uphold Mr S's complaint. This is because Santander UK Plc has already fairly resolved the complaint by paying Mr S £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 June 2024.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I'm arrived at the same essential conclusions as our investigator, but some of my reasoning is different and so in the interests of fairness I need to give both parties to the complaint an opportunity to comment further.

I'll look at any more comments and evidence that I get by 2 May 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr S complains Santander UK Plc ("Santander") failed to claim back payments made on his debit card to an online bookmaker.

What happened

Mr S says he was playing in a poker tournament on the website of a well-known bookmaker I'll refer to as "B", on 1 May 2021. He said he was using his Santander debit card to add money to the pot but his card was blocked when trying to make a payment which would have secured his place in the final – in which he would have received a guaranteed share of the prize pot.

Santander had blocked Mr S from making payments because his pattern of account activity had triggered fraud concerns. The block was removed a few days later after Mr S had provided evidence and the bank had completed its investigation, but Mr S says this was too late to enter the final and he lost out as a result. I understand Mr S complained about this and Santander stood by its decision to block Mr S from making payments, but paid him £70 compensation for some associated customer service issues.

This is the background to the present complaint from Mr S, which is about the impact of Santander failing to dispute the payments Mr S made to B on 1 May 2021, in a timely manner. Mr S says he was trying to get the bank to dispute the payments from an early stage on the basis that he hadn't received what he'd paid for, but it wasn't until months later that Santander began looking into this possibility, causing it to run out of time to raise the disputes via the Mastercard chargeback process.

Santander accepted that it had missed an opportunity to dispute the payments earlier, and paid Mr S £200 compensation in respect of this, plus another £50 compensation for leaving him on hold on the phone on numerous occasions. By December 2021 it had agreed that it would try to dispute the payments to B in any event, which it did.

B responded to the dispute to say it felt Mr S was making a "false claim". It said that all the disputed payments had been used to fund his account with B, that the money had been spent on various games and this was all consistent with how Mr S used his account. It considered Mr S had received the services he'd paid for, and added that Mr S had never played poker on its platform in 2021.

Santander decided it couldn't take matters any further and advised Mr S of this. He was dissatisfied with this response and complained. Santander responded rejecting the complaint on 30 March 2022. Mr S didn't refer his complaint to the Financial Ombudsman Service until 16 September 2023, and there was a question over whether he had brought his complaint too late for the Financial Ombudsman Service to look into. However, the delay in Mr S referring the complaint about the bank failing to refund the payments was found to be the

result of exceptional circumstances, and so it was decided that we could investigate that. One of our investigators did so earlier this year. She concluded that Santander should have disputed the payments in May 2021, but that the bank had fairly concluded that, had it done so, it would not have been successful at claiming back the money. There was nothing more she considered the bank needed to do, and that the £320 compensation already paid in total was enough to resolve Mr S's complaint.

Mr S disagreed and asked that an ombudsman review his case. He said the evidence purporting to be from B was not evidence at all and was a sham. He said it had the wrong email address for him for a start. He also said that the investigator couldn't say retrospectively that a dispute, raised at the right time, would not have succeeded.

The case has now been passed to me to decide.

What I've provisionally 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.

I want to make it clear first of all that this decision doesn't deal with Santander's initial actions in blocking Mr S's payments and lifting the restrictions on his account some days later. It is focused solely on the bank's handling of Mr S's requests to reclaim the money he paid to B on 1 May 2021, and the impact of this.

When a person uses a debit card to make payments to a company, their card issuer can use the dispute resolution system operated by the card scheme (Mastercard in this case) to try to claim back the payments in the event of certain types of dispute occurring. Disputes raised via this system are often referred to as "chargebacks" and I will use these terms interchangeably. The rules for the dispute resolution system are set by the card scheme, and they include stipulations as to how long a card issuer has to raise a dispute, the types of scenario for which a dispute can be raised, and the kind of evidence required to support one.

Chargebacks are not guaranteed to succeed in claiming a refund of payments made on a card. The recipient of the funds (B in this case) can choose to challenge or defend chargebacks if they don't think they are valid. If no agreement can be reached between the card issuer and the recipient then Mastercard can be asked to rule on the dispute in a process called arbitration.

There is no general right for consumers to demand their card issuer attempt chargebacks, but when faced with a consumer disputing a payment or payments made using their card, then I would expect a card issuer to attempt a chargeback as a matter of good practice, so long as to do so would be compliant with the card scheme rules and have a reasonable prospect of succeeding.

Mr S wanted to dispute nine payments which were successfully made to B on 1 May 2021:

Date	Payment Amount
01/05/2021	£200.00
01/05/2021	£1,000.00
01/05/2021	£3,000.00

01/05/2021	£1,000.00
01/05/2021	£400.00
01/05/2021	£1,000.00
01/05/2021	£1,000.00
01/05/2021	£200.00
01/05/2021	£1,000.00

Santander has said that it missed an opportunity to dispute the payments at the time Mr S asked to dispute them. As a result, it ran out of time to do so under Mastercard's rules, for the type of dispute Mr S wanted to raise. But that doesn't necessarily mean it would be fair or reasonable for it to refund Mr S these payments.

Mr S has said that we can't retrospectively say that a dispute, correctly raised at the time, wouldn't have been successful. I think it is accurate to state that we can't retrospectively say, with certainty, whether a dispute would or wouldn't have been successful. The best that we can do is arrive at a conclusion on the balance of probabilities. In other words – what is most likely to have happened, had Santander disputed the payments when Mr S originally asked?

Mr S says he had wanted the bank to dispute the payments because he had not received the services he had paid for. Santander has given a slightly confusing explanation of the process it followed to try to dispute the payments even though it was out of time to do so, but the evidence indicates that it was able to put Mr S's original allegations to B via the chargeback system, despite being too late under Mastercard's rules.

The type of dispute Mr S wanted to be raised is known under the Mastercard rules as a "Cardholder Dispute" chargeback. The current Mastercard rules contain specific limitations on the type of disputes which can be raised in relation to deposits made with online bookmakers:

"For transactions in which value or assets are purchased for gambling, investment or similar purposes: This chargeback right is only available for a transaction in which the purchased value or assets failed to appear in the account agreed to between the cardholder and the merchant. For the avoidance of doubt, chargeback rights are not available for

1. Refunds, withdrawals or transfer requests,
2. Terms and conditions or account access
3. Winnings, gains or losses, or
4. Use or subsequent use"¹

The rules go on to say that the merchant, to defend such a dispute, would need to provide evidence of the value appearing in, or being transferred to, the cardholder's account with them.

¹ Chargeback Guide Merchant Edition, Mastercard, 1 August 2023, p. 51

At around the time Mr S asked the bank to dispute the payments, the rules were worded slightly differently, but it is clear the intention was the same:

“Chargebacks are available to the issuer for transactions in which any value is purchased for gambling, investment or similar purposes. However, issuers have no chargeback rights relating to the use of these chips or value, unspent chips, or withdrawal of such value, or on any winnings, gains or losses resulting from the use of such chips or value.”²

What this means is that ultimately, all Santander could have done would have been to dispute the payments on the grounds they failed to appear in Mr S’s account with B.

I’ve seen the response to the dispute from B. It provides various details of Mr S’s online account with it, including a history of deposits made into the account on 1 May 2021. The deposit history appears to show Mr S using his Santander card to deposit two amounts of £200 into B’s “CASINO” product, followed by one amount of £400, six amounts of £1,000 and one amount of £3,000 into B’s “SPORTSBOOK” product. There was then a failed attempt to deposit another £1,300 into the CASINO product, which coincided with Santander putting blocks on Mr S’s account.

This would have been enough, in my view, to defend the dispute had Santander raised it when Mr S had originally asked. It met the requirements of the card scheme’s rules in showing that the payments Mr S had made on his Santander card were deposited in his account with B. I know Mr S has concerns about B’s evidence being genuine, but it is consistent with the other available evidence, such as the transaction history on Mr S’s Santander bank account. I think it is more likely to be genuine than not.

It follows that I conclude that, had Santander raised a dispute via the Mastercard system in or around May 2021, this would have been unlikely to have been successful. I think B would have defended it, for the same reasons it did later on. It wouldn’t be fair or reasonable to require the bank to reimburse these amounts to Mr S, given he would not have obtained a refund even if it had acted correctly at the time.

This leaves me to consider whether the amount of compensation Santander has paid in respect of its customer service failings is fair. I note the bank has paid £70 in relation to the service it provided around the blocking of Mr S’s account. As mentioned earlier, my decision does not deal with the account being blocked and so I’m unable to comment on that compensation payment. I can however comment on the £200 compensation paid by the bank in relation to failing to identify it could have disputed the payments earlier, and the £50 for being left on hold on the phone for excessive periods of time.

I’m not convinced it would have been reasonable to expect Santander to have disputed the payments back in May 2021 in any event. For the reasons explained above, I don’t think disputing the payments would have had a reasonable prospect of success. So it’s questionable whether the bank really needs to have paid any compensation for delaying in disputing the payments at all.

Having considered the timeline of what has happened, I think Santander’s main customer service failing has been in providing clear and accurate information to Mr S, in a timely way. For example, it could have explained to Mr S back in May 2021 that it wouldn’t be able to dispute the payments to B. It didn’t provide an explanation until its final response letter of 5 November 2021, and this explanation was poor in my opinion. Other communications, such as a letter dated 4 March 2022 explaining that the disputes had failed, were also unhelpful and lacking in detail. I think this caused Mr S some frustration and confusion. While the bank

² Mastercard Chargeback Guide, Mastercard, 4 May 2021, p. 233

hasn't specifically provided compensation for this, in light of the fact that it has already paid £200 compensation in respect of its failure to dispute the payments, and I'm not convinced that was necessary, I don't think it would be reasonable for me to require the bank to make an additional compensation payment.

Regarding the £50 paid as compensation for being left on hold on numerous occasions, again I think this is something Mr S found frustrating, but the amount paid by the bank is in my opinion fair compensation in respect of this.

My provisional decision

For the reasons explained above, I am not currently minded to say Mr S's complaint should be upheld.

I now invite both parties to the complaint to let me have any new submissions they would like me to consider, by 2 May 2024. I will then review the case again.

Will Culley
Ombudsman