

The complaint

C is a company which has been represented in bringing this complaint by its director, whom I'll refer to as "Mr B".

C complains that Santander UK Plc wrongly blocked, delayed, or declined payments made to it by its customers.

What happened

C trades with a number of customers in Russia. Between February and April 2022 it was sent six payments from Russian entities for credit to its account with Santander. Of those six payments, Santander did not apply five to the account, and it delayed the sixth for more than two months.

Mr B complained on behalf of C that the payments had not been received, and also contacted the Financial Ombudsman Service in April 2022, with a view to ensuring that the payments were credited to the account without further delay.

In June 2022 C's lawyers wrote to Santander. The lawyers' letter noted that C had been providing services to the paying companies since 2017. The letter also said that the payments which had been blocked were in respect of services provided and invoiced before Russia's full invasion of Ukraine, and that, with one exception, the tightening of the sanctions regime had not materially affected C's customers. The exception was that one of the payees had become a designated entity, but the payment it had made pre-dated that development.

In short, C's lawyers argued that the payments were not caught by sanctions against Russia and Russian entities, and that there was therefore no justification for Santander's actions.

Santander set out its position in a final response letter dated 25 August 2022. It said that, at that point, two payments had been blocked, two had been returned to the payer, one had been applied, and checks were being made on one payment.

The bank's letter explained that it restricted activity with countries or territories which were subject to sanctions, including Russia, Crimea, Donetsk and Luhansk. It said that C should not use Santander services for activities involving those places without prior approval.

Subsequently, the payment which was being checked at the time of Santander's final response letter was also returned to the sender. C applied for licences from the Office of Financial Sanctions Implementation (OFSI) in respect of the two payments which remained blocked.

One of our investigators reviewed what had happened and issued her preliminary opinion in January this year. She did not recommend that the complaint be upheld. Santander was not obliged to complete payments if they did not comply with relevant sanctions restrictions or the bank's sanctions policy. As far as the remaining two blocked payments were concerned, C should submit OFSI licences to the bank when available, so that Santander could review the position.

C did not accept the investigator's view and asked that an ombudsman review the case.

In October 2023 Mr B reported what he had been told by OFSI about the need for a licence. He quoted OFSI as saying:

"Where the only connection to a designated person ('DP') is that a UK financial institution receives funds indirectly from a designated bank (and there is no DP bank after the UK financial institution in the chain), OFSI's view is that, under the current UK Russia sanctions regulations, the asset freeze prohibitions are not engaged and the UK financial institution does not need to freeze the funds it has received. Each case should be considered on its own facts and you should seek independent legal advice if you have questions on your particular circumstances. Given the above, however, your application for a specific licence will now be closed."

Mr B said that was further evidence that Santander was wrong to block payments, and that OFSI's position reinforced the legal advice provided to C and passed to Santander.

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, however, I have reached broadly the same conclusions as the investigator did.

Condition 2.7 of the account terms allows Santander to refuse to accept payments to C's account in certain circumstances. They include where the bank reasonably believes that to do so might place it in breach of any legal or regulatory requirement or expose it to action from any government, regulatory body, or law enforcement agency, in any jurisdiction.

It seems to me very clear that condition 2.7 allows the bank to refuse to accept a payment if to do so would be in breach of any sanctions regime. That is not surprising, of course. Mr B says however that accepting the payments would not be in breach of sanctions, and he says that position is backed up by legal advice and by the information he has received from OFSI.

I believe however that condition 2.7 is wider than that. It allows Santander to decline a payment where it has a reasonable belief that to accept it would lead to a breach. That is, it can to some extent exercise its own judgment and make its own assessment about the risks involved in accepting a payment. Given the wide range of possible breaches of laws or regulations across many different jurisdictions, that does not seem unreasonable. And I think it was reasonable too for the bank to take the view that applying the payments in this case might constitute a breach – even if there was a plausible legal argument that it might not.

For the avoidance of any doubt, I make no finding on the question whether applying the payments would have been in breach of relevant sanctions in this case. That would require me to make a declaration of what the law is, and I think that is better left to a court.

OFSI's advice about the need for a licence was received after C had made its complaint and after the investigator had issued her preliminary view. It may be that Santander will wish to review its position in the light of that advice and, depending on the bank's further response, C will want this service to consider the bank's position, as a fresh complaint. In the meantime, I make no comment on the effect of OFSI's advice.

I believe however that Santander's decision to block the payments was a reasonable one at the time it was made.

My final decision

For these reasons, my final decision is that I do not uphold C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 11 January 2024.

Mike Ingram
Ombudsman