

The complaint

Mr M complains that Santander UK Plc (“Santander”) unfairly declined to make a chargeback following a dispute.

What happened

The background of this complaint is well known to all parties, so I’ve summarised events.

- Mr M gambled using an online casino I’ll refer to as Company A.
- A problem arose when Mr M tried to withdraw his winnings. After several attempts using various methods, he contacted Santander and asked it to complete a chargeback. He provided it with a disputed transaction form and supporting evidence.
- Santander declined the chargeback as it said the dispute didn’t meet the relevant criteria of *“goods or services either not as described or defective”*. Instead it said the gambling, which it considered the service in question, had taken place. So, there was no dispute for it to raise under the relevant chargeback rules.
- Mr M brought his complaint to this Service. Our investigator initially upheld the complaint, directing Santander to either process the chargeback or settle the disputed sum, and award £100 in compensation.
- Santander responded, quoting a section of the Mastercard chargeback rules.

“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 related 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.”
- The Investigator looked again, and in light of the rules highlighted by Santander, agreed they specifically show Mr M would have no chargeback rights for the scenario he had raised.
- Mr M disagreed with both Santander’s and the Investigator’s interpretation of the rules. He also cited several decisions issued by this Service which he said show his complaint should be upheld. Additionally, he said the funds were never made available for gambling because there was no opportunity to win a prize – as the vendor was not registered with any gambling authority.
- The Investigator didn’t change her mind, so the complaint has been passed to me for an ombudsman’s final 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.

When considering what’s fair and reasonable in the circumstances I need to take into account relevant law and regulations, regulators’ rules, guidance and standards, codes of

practice and, where appropriate, what I consider to be good industry practice at the time. Having done so, I'm not upholding this complaint. I'll explain why.

Mr M's complaint brought to this Service concerns whether or not the dispute he has with Company A meets the criteria of the chargeback rules.

Chargebacks are decided based on the card scheme's rules. So, I've begun by considering what they say. Based on the rules (outlined above), it's clear to me there are no chargeback rights related to the use of "*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.*"

In this case, Mr M appeared satisfied he was able to gamble with Company A. In his complaint to this Service he has referenced claiming his "*winnings*". This in itself suggests to me he was able to gamble with Company A in the way he intended and his dispute lies with the withdrawal of such value within the account – which is specifically excluded from the rules. So, on its face, it appears Santander fairly declined the chargeback.

Mr M has indicated the overall service provided by Company A was a scam, and in light of its actions and lack of registration with any gambling authority that he would have never been able to claim his winnings. In turn, he's said this Service should consider the overall service provided by Company A to be not as described, and not consider it as "*gambling*" as he never had any opportunity to win.

I've thought carefully about this, but I'm not persuaded by Mr M's argument. I understand Mr M's strong feeling on the matter, but his difficulty with withdrawing funds isn't enough to persuade me there was no opportunity for him to "*win*" at all. So, on the balance of probabilities, I think Santander acted fairly by considering the matter as gambling and declining the chargeback as it did.

I've also considered the decisions issued by this Service that Mr M has referenced. This Service determines each case on its own merits, and that is what I've done in this case.

My final decision

For the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 February 2022.

Jack Baldry
Ombudsman