

The complaint

Mr J complained because Santander UK plc adjusted his account, when another business made a mistake with a transaction.

What happened

On 12 May 2022, Santander wrote to Mr J. It told him that it had received information from an agent organisation. This said that on 29 April the agent had processed a £108.66 payment to Mr J as a credit. This meant Mr J's account had been credited with £108.66 instead of being debited.

Santander apologised, and said that in 14 days from the date of the letter, it would debit Mr J's account with £217.32. This was to remove the wrongly credited £108.66 and to debit the amount Mr J had withdrawn.

Mr J complained. On 31 May, he wrote that he had given Santander no authority to debit his account and had specifically instructed him not to. He said Santander hadn't provided any paperwork or court judgment that would allow Santander to debit his account so he considered Santander had stolen his £217.32.

In its letter on 27 June, Santander asked Mr J for his version of events. It asked him whether he had his card; whether he'd withdrawn £108.66 from his account on 29 April; whether he'd deposited £108.66; and whether anyone else had had access to his card. It said that it could see that every week, Mr J received benefits, and that he withdrew that money in full from either a Santander branch or the agent organisation. It couldn't see any credits to Mr J's account made at the agent organisation.

Santander also said that as the withdrawal had been made using Mr J's genuine card and PIN, it needed to know whether he had authorised it – and if he hadn't, then the card could be cancelled and a fraud claim investigated.

Mr J sent further complaint emails to Santander, but he didn't answer Santander's questions about whether he'd withdrawn £108.66 on 29 April, or whether he'd paid in £108.66. He said that as there was no longer a passbook, he couldn't be expected to know which dates or transactions he'd carried out.

Santander issued its final response to Mr J's complaint on 15 July. This endorsed what it had previously said about the bank's position. It also dealt with Mr J's request for the final response to be sent by email, and said its normal position was that it sent all email documents encrypted. As Mr J wasn't able to speak to Santander about his complaint over the phone, he'd said he wanted the email unencrypted, accepting any risks. As Mr J had said he'd be accessing the email on a public computer, Santander hadn't been able to consider any other arrangements.

Mr J wasn't satisfied and contacted this service. He said that he had no record of any mistake being made and no recollection of being told about a mistake at the time of the transaction at the agent's premises. Mr J said he'd checked the terms and conditions and

these didn't say that Santander could remove his money and give it to a third party organisation which wasn't a bank. He said it wasn't within Santander's remit to interfere with a private matter between him and the agent organisation. He said that because he didn't remember the transaction, Santander had taken the agent organisation's word as gospel. He was also unhappy because Santander refused to send him its final response by email.

Our investigator didn't uphold Mr J's complaint. She said that account records showed that Mr J had withdrawn £105.41 every week until 22 April 2022, when it had increased to £108.66 weekly. Account records from April to November 2022 showed that no deposits were ever made to the account. Mr J had said he had no recollection of a mistake and hadn't been provided with any proof. The investigator said that it was most likely that Mr J knew he hadn't deposited money, and that the terms and conditions said that if Santander reasonably believed a payment had been made in error, it could take the money back. She also said that while this service can't comment on operating practice, and so couldn't say that Santander should send emails without encryption, it had offered alternatives which Mr J hadn't wanted to accept.

Mr J didn't accept the investigator's view. He disputed many aspects of her view, including saying that the full terms and conditions hadn't been adhered to, and he'd never been supplied with any evidence of the so-called mistake. He asked for an ombudsman's 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.

Mr J has suggested that Santander has no right to have debited the payments as it has here. So I've first considered the basis on which it's done so, where Mr J says he doesn't recognise the mistake in dispute. As Santander has mentioned, the key consideration here is whether it looked as if Mr J had authorised a transaction on 29 April. If he didn't, then under the relevant regulations, he can't be held liable for it.

Information from Santander's systems shows that a withdrawal for £108.66 was processed at 9:03am on 29 April. The withdrawal was processed using Mr J's genuine card, with its chip, and the correct PIN was entered. Mr J hadn't reported his card lost or stolen at this point. I can't see that he replied to Santander's question about this in its 27 June letter either.

So the technical evidence shows a withdrawal was made using Mr J's genuine card and correct PIN – I can't see how any third party can have done this. Nor has Mr J said whether he withdrew £108.66 that day. I appreciate he said he can't remember because the account is no longer a passbook account. But I think it's likely he'd have remembered if the card had been lost or stolen – and as I've said, an undisputed withdrawal took place a week later on 6 May, so he must have had his card then. Santander was provided with clear evidence from the agent that the agent had processed this transaction wrongly, and so it acted on that. Santander doesn't have to let Mr J see a copy of this evidence, which is confidential to its business. But I've checked it, and that's what it does show.

I've also looked at the pattern of transactions on Mr J's account. The pattern shows benefits being credited, and undisputed withdrawals for the full amount being withdrawn in cash every week. I recognise that Mr J doesn't think this pattern is determinative. But on top of the technical evidence that a withdrawal took place using his card and PIN, it adds to the weight of evidence that indicates that Mr J authorised a withdrawal here.

Mr J has only said that he doesn't remember the transaction in question here. But I have to consider the evidence from both sides and Santander's evidence persuasively shows that it's more likely than not that Mr J was trying to make a withdrawal rather than a deposit that day. There's no evidence of a deposit being requested on its systems.

It's also unfortunate that Mr J didn't reply to any of Santander's questions about what Mr J did that day – whether he withdrew £108.66; whether he deposited £108.66; or whether he'd lost his card. This lack of a response about his side of the story doesn't provide any information that might help his cause.

In summary, the technical, and circumstantial, evidence makes me think it's more likely than not that the agent organisation did make a mistake. I consider it's most likely that Mr J withdrew £108.66 on 29 April, and didn't make a deposit for that amount. So I consider Mr J's account should have been debited with £108.66, not credited with this amount.

Santander's powers to correct the agent's mistake

As I've found that Mr J's account should have shown a debit of £108.66 on 29 April, and instead showed a credit, I've gone on to look at whether or not Santander had the power to correct this. Mr J has argued that Santander doesn't, and his dispute is with Santander's agent.

First, the money in dispute wasn't Santander's agent's money. It acts as an agent for Santander, and it was Santander with whom Mr J had his account and his contract. So his dispute here is with Santander – not with Santander's agent. Mr J has said that Santander's agent isn't a bank, so Santander didn't have the power to take back the money. But in its capacity here, it was acting purely as an agent of Santander. So it's Santander's terms and conditions which apply.

Mr J would have accepted the terms and conditions of the account when he opened it. Section 7.5 of the terms and conditions says:

"Payments made into your account in error

If a payment is made into your account by mistake, the money may be taken back out of your account. How and when we do this will depend on the type of payment and the reason for the mistake.

...

c) if we have incorrectly credited any payment to your account, we will take the money back out of your account. We do not need your permission to do so."

Mr J has argued about a number of the subsections in section 7.5, but this is the relevant part. It shows that Santander did have the right to take back money which its agent had wrongly credited.

Mr S has argued in detail about the wording of these terms and conditions. I've read and understood his submissions. But I consider that the above is the real nub of the issue – the agent organisation was acting as Santander's agent, and Santander acted fairly and reasonably to correct the agent's mistake and correct Mr J's transaction. I find that Santander acted correctly when it:

- debited Mr J's account with the withdrawal which did take place that day, and
- removed the deposit which there is no evidence to show took place.

Finally, Mr J was unhappy because Santander said it wouldn't send him its final response by unencrypted email, because he'd said he'd be accessing it using a public computer. This service doesn't normally intervene in a bank's processes, because that's the role of the

regulator, the Financial Conduct Authority (FCA). But I don't think Santander acted unreasonably, because I can see that it offered alternatives, and that it eventually did send the letter by unencrypted email, on the basis that it did so at Mr J's risk.

So I do not uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 February 2023.

Belinda Knight
Ombudsman