

The complaint

Mr B has complained that Santander UK Plc held him liable for transactions he says he didn't make or otherwise authorise.

What happened

In May 2022, Mr B went to a bar abroad, which I'll refer to as "L". He accepts he made at least one genuine payment at L, but disputes about £3,000 of spending on his debit card and about £160 on his credit card from that night. He suggested L might have taken and replaced his cards or misrepresented what amounts they were putting through.

Santander raised chargebacks on Mr B's behalf after some delay, and gave him temporary refunds. But they said that if the chargebacks weren't successful, they'd hold him liable for the payments. They offered him £100 compensation for any distress caused in the way they'd handled his complaint.

In August 2022, Mr B was then charged another £3,000 or so via L's payment service provider, which I'll refer to as "W".

Our investigator looked into things independently and didn't uphold the complaint. Mr B appealed, so the complaint's been passed to me to decide.

I sent Mr B and Santander a provisional decision on 7 February 2023, to explain why I thought the complaint should be upheld. In that decision, I said:

I have taken into account everything that both sides have said and provided. But I won't comment on everything – instead, I'll focus my decision on the key points and the next steps.

Debit card payments to L

I can see that Santander raised chargebacks for the disputed debit card payments to L, totalling about £3,000. I can see these were refunded to Mr B in August 2022.

Santander have been very unclear about the status of these chargebacks, and appear to still be treating the refunds as temporary. However, it's been nearly six months since these chargebacks were raised, the merchant would've only had a month or two to appeal them but don't appear to have done so, and the process should have finished some time ago.

We asked Santander for a copy of any representment they'd received from the merchant's bank, but they didn't provide any. So it doesn't look like the merchant's bank appealed or fought these chargebacks.

Meanwhile, Santander's notes appear to have logged these chargebacks as "Solved", noting that they were won at pre-arbitration stage.

So by all accounts, it looks like the chargebacks for the debit card payments to L were successful.

It follows that I currently think the temporary refunds should now be considered permanent, and that Santander can no longer re-debit them.

Credit card payments to L

Similarly, I can see that Santander raised chargebacks for the disputed credit card payments to L, totalling about £160. I can see these were refunded to Mr B's credit card in July 2022.

Again, given the time that's passed, and given that the merchant's bank does not seem to have provided any representment, it appears that these chargebacks were also successful.

So I currently think those temporary refunds should also now be considered permanent, and that Santander can no longer re-debit them.

Debit card payments to W

If Santander wish to hold Mr B liable for the payments to W, they will need to be able to evidence that the payments were properly authenticated, and that Mr B consented to them.

According to Santander's technical evidence, only four payments were authenticated that night – the four payments to L. Mr B did not authenticate an additional four payments to W at the same time for the same amounts.

As far as I can see, the payments to W were not properly authenticated. They do not appear to have used Mr B's genuine card or PIN, the authentication method shows as "unknown", and the amount authorised shows as "0.00". Further, the goods were categorised as being for airline transportation services, which is clearly not right for a bar.

I find that Santander have not evidenced that Mr B authenticated these payments, let alone that he consented to them. It follows that I do not currently think Santander can hold him liable for them.

It's also notable that the four debit card payments to W were put through at the same time as the four debit card payments to L. W simply appears to be L's payment service provider, who for whatever reason delayed taking the amounts until August 2022. After adjusting the currency conversion rate for the time that passed, I see that the amounts in local currency for the four W payments are the same as the amounts for the four L payments.

In other words, it appears that the four W payments were made at the same time as the four L payments, for the exact same amounts, in the exact same order, without being separately authenticated. So based on what I've got, I think it's most likely that the W payments are simply duplicates of the L payments, and so were debited to Mr B's account in error. That would also mean that Santander needs to refund them.

Other issues

Lastly, I understand that Mr B was caused some real stress by the way Santander handled the situation. I agree with our investigator that £100 compensation is fair to put that right.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 7 March 2023. Santander agreed to the proposed redress, and clarified they'd already paid the £100 compensation. Mr B raised some further points, which I'll talk about below.

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 B expressed his disappointment that Santander hadn't given him further details he'd wanted about the transactions on the evening in question. And while I do understand his frustration, now that those transactions are being refunded – which is the key issue – I don't think that information is really relevant to the outcome of this case anymore. With that said, if Mr B feels Santander didn't provide data he was entitled to, he can make a separate complaint to the Information Commissioner's Office (ICO for short) who oversee data issues.

Mr B also complained about Santander not handling the chargeback process correctly, and about the time it took. Santander have now agreed to treat the initial chargeback as permanent, to refund the four payments that they hadn't charged back, to refund the related fees, and to add simple interest to compensate Mr B for the time he was without his money. I'm grateful to Santander for agreeing to do so, and this will put Mr B in the financial position he would've been in had things gone as they should have. So I think the chargeback issue will now be resolved.

Lastly, Mr B added that Santander hadn't acknowledged part of his complaint. As before, I agree with Mr B that Santander caused him some real stress in the way they handled this situation, and I do understand his point of view. When a business gets things wrong, we often tell them to pay compensation, to acknowledge their mistakes and the impact they had. In terms of the amounts, it's worth bearing in mind that we're not here to issue large fines or to punish businesses. It's also worth keeping in mind that it was the merchant, rather than Santander, who primarily caused the situation. And the simple interest that Santander will pay will already compensate Mr B for the delay in getting his money back. We have guidelines about what levels of compensation to award, and I need to be consistent with those. Taking everything into account, I think that the £100 Santander paid is fair to put right the trouble and upset they caused Mr B here.

So having reconsidered the case, I've come to the same conclusions as before.

Putting things right

I direct Santander UK Plc to:

- treat the chargeback refunds as permanent, and not re-debit them;
- refund the four payments to W from August 2022;

- pay simple interest to Mr B on the transactions to W, at the rate of 8% simple a year, for periods where his account was in a credit balance. This simple interest is payable from the date the payments were debited until the date they're returned[†]. This is to compensate Mr B for the time he didn't have his money.
- refund any interest or fees that Mr B incurred because of the disputed transactions, including any foreign currency fees;
- pay Mr B the £100 compensation offered, which I understand they've already done.

[†] HM Revenue & Customs requires Santander to take off tax from this simple interest. Santander must give Mr B a certificate showing how much tax they've taken off if he asks for one. Mr B may be able to claim the tax back from HMRC if he doesn't normally pay tax.

My final decision

I uphold Mr B's complaint and direct Santander UK Plc to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 April 2023.

Adam Charles
Ombudsman