

The complaint

Mrs A complained because Santander UK plc didn't refund her for a dispute about services she'd paid for, but didn't receive.

What happened

On 16 October 2020, Mrs A paid £494 to a beauty treatment firm.

On 31 March 2022, Mrs A rang Santander. She said she'd been trying to get through for three or four days, but the waiting times had been more than an hour. She said that she'd paid for 12 beauty treatments, and she'd only had one. She'd had another booked but on 18 March the business had emailed her, saying:

"We are sorry to inform you that all appointments at [location] have been cancelled due to the clinic closing permanently... There has been misinformation spread online which has caused mass refunds.... We will not give up on our vision but for now we unfortunately have to take a step back to get back on track. If you do have remaining treatments, we advise you to claim a refund through your bank by letting them know that you did not receive the service that you paid for. Please use this email to claim your refund."

Mrs A had tried to contact the beauty treatment business but hadn't been able to get through. She gave Santander the details and asked it to help. Santander said it would send her a form through the post, which she'd need to complete and return with supporting evidence.

On 7 April, Mrs M contacted Santander again, because she hadn't had any paperwork. She said she'd also been promised an email link, which she hadn't had. The call handler said that the dispute was going to be out of time by the following day, so Santander wouldn't be able to raise it with the card scheme for a refund. Mrs A said that she hadn't been told that when she'd phoned on 31 March. The call handler said that in any case Santander would have had to wait for Mrs A's paperwork to arrive and upload it, so this would have been too late. Mrs A complained, because she hadn't been told any of this when she first rang.

On 14 April Santander replied to Mrs A's complaint. It said it hadn't made a mistake. It said that the chargeback card scheme allowed 120 days from the date a company ceased trading, as long as the payment had been made no more than 540 days before. Santander said this meant it would have had to have had the signed form and evidence by 10 April, and as the form took 7 to 10 days to reach a customer, there wasn't enough time for Mrs A to have returned the form, and for Santander to have had 48 hours to check it. Santander told Mrs A that as the company had ceased trading, she should be able to claim through the administrators.

Mrs A didn't agree. She was unhappy with the outcome, and felt Santander should have pursued a refund. She felt that Santander had handled her claim poorly, as the short timeframe had never been explained. There had been a lack of clear communication, meaning she'd had to call constantly, waiting in long queues, for updates, and Santander also hadn't called her back to discuss the outcome.

Santander sent Mrs A its final response on 23 April. It said that when Mrs A had contacted Santander on 31 March, there hadn't been enough time to process her refund claim and sent it to the chargeback card scheme. It said Santander didn't have any discretion on the scheme, and had no other way to pursue the refund for her. Santander agreed, however, that its service hadn't been to the level expected. It said its call handlers should have been clear from the start that the claim was extremely close to the card scheme deadline, and there was a possibility it couldn't be pursued. Santander apologised for the fact that Mrs A had had to make several phone calls for a better understanding of the process and to chase an update, and paid her £50 compensation for this.

Santander also said that even if Mrs A had contacted it in time, it believed the chargeback criteria hadn't been met. That was because there was nothing to show the merchant was in liquidation – and Companies House showed it as an active business. The company website was operational and that indicated that some branches were still open for treatment. So it said Mrs A should take legal advice and contact the business.

Mrs A wasn't satisfied and contacted this service.

Our investigator didn't uphold Mrs A's complaint. She said the email which the business had sent Mrs A didn't show the company had gone into liquidation, just that the branch Mrs A used was permanently closing. She explained that chargeback is a voluntary process run by the card schemes not by the banks. It has strict rules which aren't set by banks. The investigator thought Santander should have sent the forms to Mrs A more quickly, but from the information she'd seen, she didn't think the chargeback would have been successful anyway. So she thought Santander's £50 compensation was reasonable.

Mrs A didn't agree. She said that the email from the business meant that all clinics were closing, even though it only specifically mentioned her local one. She mentioned other locations including large cities and the head office, which were also closed – she said she'd phoned all of the branches and they were all closed. And she pointed out that the email had specifically told her to claim a refund from her bank. Mrs A clarified that she'd also made an earlier payment of £315 on 3 September 2020, but she hadn't complained to Santander about this.

Mrs A asked for an ombudsman's decision.

My provisional findings

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision.

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

First, I clarified the situation with regard to a "scam" which Mrs A mentioned in her complaint form to this service. She had referred to the merchant "running a scam company" and said that she'd "informed my bank straight away about the situation and that most likely I have been the victim of a scam." A scam involves a trick or an element of deception, and there was no indication Mrs A had been tricked into paying the merchant. She'd paid it £315 before, which she hadn't disputed, presumably because she'd had the services for that payment. And she'd said she'd had two of the 12 treatments for the £494 payment. This history of receiving services for money paid didn't indicate that Mrs A was tricked. I also listened to the available call recordings, and looked at the notes. Neither on the call

recording nor in the notes did Mrs A ever say to Santander that she'd been scammed. It was first raised in her complaint form to this service. I didn't consider there was a scam here. Instead, I considered this as a complaint about not receiving all the services the customer had paid for, when a merchant stopped trading.

Mrs A used her Santander debit card for the transaction. This means that the relevant way she could make a claim for services which hadn't been provided, was through the chargeback process. There's another way of making a claim against the supplier of goods and services, called a Section 75 claim, but that only applies if the customer has paid using a credit card. So Section 75 isn't applicable for Mrs A's claim.

A chargeback is a process by which disputes are resolved between card issuers (here, Santander) and merchants (here, the beauty treatment business). Chargeback schemes are run by the card schemes (the business which runs the payment network). They're intended to resolve settlement disputes, but sometimes, as here, things have gone wrong between the card holder (here, Mrs A) and the merchant (the beauty treatment business). Chargeback schemes have strict deadlines and that's the key point at issue in Mrs A's complaint.

Time limits

The relevant card scheme rules say that, where a chargeback claim is made because goods or services haven't been delivered, the claim must be submitted by the bank to the card scheme:

- within 120 days from the last date when the customer became aware that the service had ceased; and also
- within 540 days of the payment being made.

Looking at these two elements:

The date when Mrs A became aware that she wouldn't get the services for which she'd paid, was 18 March 2022, when she received the merchant's email saying that all appointments had been cancelled and she should contact her bank for a refund. So there was enough of the 120 days remaining on this part of the timescale by the time of the discussions with Santander during March and April 2022.

Mrs A made the payment on 16 October 2020. The limit of 540 days from the payment being made meant that the claim with all supporting documents had to be submitted by Santander to the chargeback card scheme within this timescale. A number of different dates had been calculated for this, but in Santander's first response to Mrs A it said the deadline was 10 April 2022. By my calculations the 540th day after 16 October 2020 was 9 April 2022 so Santander would have had to have submitted the claim and all supporting documents by the end of that day and before 10 April 2022.

Santander suggested that the merchant wasn't in liquidation. But for the purposes of the scheme rules, the exact status of the merchant doesn't matter. The point is whether or not the service was going to be provided. It's clear from the merchant's email to Mrs A that it wasn't going to provide Mrs A with the services she'd paid for as "*all appointments at the [location] clinic have been cancelled due to the clinic closing permanently.*" An internet search shows that other branches too had closed, including those in large cities – and that there was also a lot of bad press at the relevant time. It's reasonable to think that if the merchant could have provided Mrs A with her services at another branch, it would have said so.

I also checked on Companies House. There's no longer a company trading under that name, although a different company appears to have taken over the name. But what happened to the trading name or company is irrelevant – what matters is that the merchant wasn't going to provide Mrs A with the services.

I went on to consider whether it would have been feasible for Santander to have submitted the claim in time.

Could Mrs A's claim have been submitted in time?

Mrs A didn't contact Santander until 31 March. So it was always going to be very tight to meet the deadline to submit the full claim with supporting documents before 10 April.

But I considered it should have been possible. The call recording for 31 March showed that Santander's internal expert told the call handler of the imminent deadline, and she recorded on the bank's system that *"the transaction is within the 540 days...please provide customer link to uphold docs online and advise to do it as soon as possible. This is what we need: ..."*

But Santander didn't do this. It told us that in line with the existing process, it wouldn't let the customer know any outcome from the call handler's request to the internal expert. It said it would have advised the customer to ring back after two working days. But this was the section of the call recording which Santander said was missing. So there was nothing to show that Santander told Mrs A to ring back within two working days. And as it was urgent, as Santander's internal expert had realised, I considered Santander didn't treat Mrs A fairly when it failed to act on the internal expert's instructions. It wasn't fair to follow a practice never to let customers know the outcome from an internal expert in these circumstances.

Instead, Santander's first written reply to Mrs A's complaint said it wouldn't have been possible because *"the disclaimer takes 7-10 days to reach you."* I couldn't see why Santander didn't email the disclaimer form to Mrs A, which wouldn't have taken 7 – 10 days.

Santander told Mrs A in its 14 April letter that it needed 48 hours to check the evidence in a chargeback claim. So if Santander had emailed Mrs A with the forms immediately after she rang on 31 March, and she'd returned them within a day or two for Santander to do 48 hours of checking and submission, it would have been possible for the claim to have been submitted to the card scheme before it became out of time at the end of 9 April.

As Mrs A did chase Santander regularly, despite the waiting times of over an hour, I found that it was more likely than not that she would have submitted the form and supporting evidence promptly, if she'd been emailed the forms and told how urgent it was. So I found that it was because of Santander's omissions that Mrs A's claim didn't get submitted to the card scheme.

Would it have made a difference to the outcome if Mrs A's claim had been submitted to the card scheme in time?

The outcome of a chargeback is decided by the card scheme, not by the bank. So I can't say for certain whether or not Mrs A's claim would have been successful, if Santander had sent her the necessary forms and submitted her claim on time. But I needed to decide whether Mrs A suffered a financial loss as a result of Santander's failings – in other words, whether it was more likely than not that the claim would have succeeded if it had been submitted on time.

On balance, I thought it was more likely than not that Mrs A's chargeback would have succeeded if it had been made in time.

There is a well established chargeback reason code that applies to goods or services that have not been provided by the merchant. The criteria under that reason code seem likely to cover Mrs A's circumstances, and none of the exceptions that are outlined in the card scheme rules would be applicable here.

The email from the merchant said that all appointments had been cancelled, and *"if you do have remaining treatments, we advise you to claim a refund through your bank by letting them know that you did not receive the service that you paid for. Please use this email to claim your refund."* I considered this was sound evidence that the merchant wasn't going to provide Mrs A with what she'd paid for.

Conclusions

Taking all these factors into account, I considered it was more likely than not that Mrs A's chargeback claim would have succeeded if Santander had provided her with the forms promptly, notified her of the deadline, and submitted the claim promptly. So I looked at compensation for this.

Mrs A paid the merchant £494. In her complaint form she said she'd received two of 12 treatments. So her financial loss was 10/12 of £494 which is £411.67. I said that I also intended to award interest on that figure at 8% simple per annum from 16 October 2020 to the date of payment.

I also considered compensation for distress and inconvenience. Mrs A had to chase repeatedly, and said phone waiting times were over an hour. She had the inconvenience and worry of having to do this, which wouldn't have been necessary if Santander had acted as I've set out above. While it would always be stressful when a merchant stops providing services which had been paid for, I considered it was more likely than not that it could have been relatively quickly and easily resolved if Santander had acted as it should. I considered that Santander should pay Mrs A £100 for distress and inconvenience. It had already paid her £50, which leaves a further £50 still to pay.

So my provisional decision was that I intended to uphold this complaint and to order Santander UK Plc to pay Mrs A:

- £411.67 financial loss for the payment which I think was more likely than not to have been refunded under the chargeback process; and
- Interest on this amount at 8% simple per annum from 16 October 2020 to the date the settlement is paid; and
- £100 compensation for distress and inconvenience. Santander has already paid Mrs A £50, which would leave £50 still to pay.

Responses to my provisional decision

Mrs A said she was pleased with the provisional decision, but it hadn't taken into account the total amount she had paid to the beauty treatment business, which was £809. She said she had paid £315 on 5 September 2020 and £494 on 17 October 2020. She noted that I'd said in the provisional decision that she hadn't disputed the £315 payment, but she could recall disputing the total of £809 on the phone. She said she hadn't received any treatments for the earlier payment. She said there had been delays because of Covid, and asked me to include both amounts in my final decision.

Santander said it agreed some of my provisional decision. It agreed £411.67 representing Mrs A's financial loss. But it said that interest on this should be paid from the date when Mrs A first contacted Santander about the problem, which was 31 March 2022, not from 16

October 2020 when the payment had been made. Santander also said it accepted paying £50 to Mrs A for distress and inconvenience.

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.

I've carefully considered the points made by both Mrs A and Santander in their responses to the provisional decision.

Mrs A's points

I have gone back to the Mrs A's original complaint to Santander on 31 March 2022, and I have listened again to the call recording. I've heard nothing to indicate that she reported the earlier £315 payment as well as the £494 payment. It is clear on the recording that what she told the adviser was that she made the payment on 17 (sic) October 2020 and it was for £494.

As there is no evidence that Mrs A reported the £315 payment to Santander, I can't consider it. This service can only look at matters about which a complaint has clearly been made to the financial organisation, so they have an opportunity to respond.

But in any case, even if Mrs A had reported the 5 September 2020 £315 payment, by 31 March 2022 it would already have been outside the timescales for submitting a chargeback. As I've set out above, the timescale was very tight even for the 16 October 2020 payment, and the earlier 5 September payment was already out of time. So even if Mrs A had raised the 5 September payment with Santander on 31 March 2022, she'd have done so too late for Santander to have been able to raise a chargeback.

For the avoidance of confusion, I would also clarify the position about the number of treatments received and claimed. There is different evidence about this at different stages of the complaint. But I have relied on the complaint form which Mrs A submitted to this service. She wrote *'The deal was supposed to consist of 12 treatments. I only had two treatments with the most recent treatment in February 2022.'* This is the basis on which I have calculated her financial loss as being 10/12 of £494 which is £411.67.

Santander's points

I can understand why Santander says that interest should only be paid on the £411.67 from the date when Mrs A reported the dispute, which was 31 March 2022. Sometimes, the date when the loss occurred is the date of payment. But here, Mrs A was still expecting to have the remaining 10 treatments when she received the beauty treatment firm's email in March 2022. There had been a delay, but that had been because of covid.

Interest is generally intended to compensate a customer for the loss of use of the money. But here, Mrs A didn't lose the use of her money until it was unfairly not refunded. I find that 31 March 2022 was the date Santander should have put the money back into Mrs A's account as part of the chargeback process. So the date when she was deprived of the money, and from which interest should be calculated, was 31 March 2022.

Finally, Santander said that it agreed to pay £50 compensation for distress and inconvenience. To clarify, this is in addition to the £50 it has already paid her, making £100 total in all.

My final decision

My final decision is that I uphold this complaint. I order Santander UK plc to pay Mrs A:

- £411.67 financial loss, for the payment which I think was more likely than not to have been refunded under the chargeback process; and
- Interest on this amount at 8% simple per annum from 31 March 2022 to the date the settlement is paid. If Santander deducts tax, it should tell Mrs A how much it has deducted, and if Mrs A requests one, it should provide a tax deduction certificate. This would enable her to reclaim the tax from HMRC if appropriate for her personal tax circumstances; and
- £100 compensation for distress and inconvenience. Santander has already paid Mrs A £50, which leaves £50 still to pay.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 19 May 2023.

Belinda Knight
Ombudsman