

The complaint

Mr S complains that Santander UK Plc failed to refund several transactions from his account that he didn't authorise resulting in a debt that has impacted his credit rating.

What happened

Mr S had a gambling account with a merchant I'll refer to as V and had made numerous transactions without any issues. In 2019, Mr S says he made bets with V in one of their shops and then received four large payments into his account which totalled in excess of £11,000.

Mr S then transferred most of those funds into another account. A few days after receiving those funds, his account showed that they had been removed from his account back to V, taking the account into an unarranged overdraft.

Some weeks later, Mr S raised the issue with Santander and denied he'd authorised the payments back to V. Santander looked into the transactions as a dispute (rather than as fraud) and didn't offer Mr S a refund because he had a legitimate relationship with V.

Mr S's account now had a debt which was left unpaid. This eventually defaulted and Santander passed the debt to their "collections" area to seek recovery of it. No payments were made by Mr S and nothing further was heard until about two years later when Mr S got back in touch with Santander to complain about his credit rating that was being affected by the outstanding debt (which Mr S denied was his).

Santander looked into the situation and didn't think that they'd made an error. They wrote to Mr S and explained to him that they had carried out an investigation at the time and found no reason to think the payments should have been refunded. They pointed out to Mr S that he'd moved the payments from V to other accounts and continued to use his account, so would have known about the payments to V, but had delayed notifying them about the debt.

Santander didn't offer any refund to Mr S and told him the debt was still outstanding and any reference to it on his credit file would remain.

Mr S was unhappy about the situation and then brought his complaint to the Financial Ombudsman Service for an independent review where it was looked into by one of our investigators.

Evidence was sought from both parties and Mr S maintained that he'd never authorised the payments to V. He said that he was briefly out of the country which delayed his notification to Santander and was suffering from mental health issues and distractions in his personal life. This delayed any contact with Santander. Mr S says he moved address in 2021 and didn't receive any letters from Santander about the debt.

Santander were unable to provide detailed information about the transactions made back to V and eventually accepted that they could have done more at the time with Mr S's dispute but didn't think it would have made a difference.

Santander provided details of addresses held for Mr S, including the one where he was living at the time of the original issue in 2019. Santander confirmed that they'd sent several letters to Mr S during this period.

Santander attempted to contact V but didn't receive much help from them. Santander attempted a "good faith" chargeback to try and resolve the matter, but this wasn't accepted by V's bank. Santander eventually identified more information about the transactions which showed they hadn't been made by Mr S. But what had happened is that V had recalled the payments using the card payments system. Santander believed the issue of the payments was between Mr S and V but accepted they could have done more at the time and offered Mr S £200 which he turned down.

Mr S attempted to obtain evidence about the transactions (his betting slips) but was unable to find them and couldn't obtain any assistance from V.

After reviewing the evidence, the investigator thought Mr S was responsible for the payments and didn't uphold the complaint. Mr S disagreed and asked for a further review which has now been passed to me for a decision.

I issued my provisional findings on the merits of Mr S's complaint on 31 March 2023. In my provisional findings, I explained why I intended not to uphold Mr S's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

What I've provisionally 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.

The crux of this complaint concerns four payments Mr S received from V which amounted to over £11,000. Those four payments were then recalled by V from Mr S's account a few days later, after Mr S had already utilised the funds. This eventually created a debt on the account which resulted in a default (the amount went unpaid). The debt was reflected on Mr S's credit file. A few years later Mr S had difficulty obtaining a loan because of the negative reporting on his credit file.

It appears here that V had some issue with the payments made to Mr S and utilised the card payments system to force the return of them. Santander would have no control over this because the payments system allows a merchant to recall funds they've sent if there's a relevant issue with them. What's not known here is what that issue was?

Santander would have had the opportunity to use a "chargeback" to challenge the recall of the payments. This is a process contained within the payments processor's rules for dealing with transactions made by card. They are subject to strict rules and timescales.

It's apparent that Santander didn't fully follow up with the situation at the time and then lost the opportunity to use the chargeback system to challenge the recall of the payments. That's because the time limits applied to them had passed.

So here, the relevant issue for me to consider is would a chargeback request have made a difference to the outstanding debt? If Santander's actions at the time affected the refund of those monies, then they would likely be responsible for the debt. If, on the other hand, the overall circumstances showed that V were likely to have successfully defended any challenge, then Santander wouldn't be responsible for the ongoing debt.

I asked Mr S to provide evidence that he was entitled to those funds. That's because if he could provide relevant evidence (such as betting slips) showing he won the money, then he could show that Santander would have had a good chance of challenging the recall of the funds by V in any chargeback request.

Mr S has been unable to provide the slips or any other evidence about why he received those payments. He confirmed he threw the slips away shortly after he received the payments into his account. To date he believes someone at V was undertaking fraud and is responsible for the payments being recalled. Mr S has said an employee has information but that they wish to remain anonymous. Mr S stated that he's tried to obtain cooperation from V on numerous occasions, but they haven't assisted him.

Without evidence that Mr S was entitled to those funds in the first place, it's difficult to reach a conclusion that Santander's actions caused the overall loss. That's because V took steps to recall the funds which doesn't seem to be something done lightly by them. I've thought about Mr S's assertion that an employee was responsible, but the likelihood is that any recall of funds utilising the card payment system would involve multiple employees working at V. It's not something that I would think immediately pointed towards fraud as the reason for it.

If it was one employee at the branch used by Mr S, then how would they obtain those card payments from V's own accounts? It doesn't seem like this is the likely answer here.

It's also not clear why Mr S left the issue of the outstanding debt for about two years. Looking at his account, it continued to be used for about six months after the money was taken back by V. So, Mr S would most likely have been aware that the money was still outstanding, and his account had an unarranged overdraft which needed to be resolved. It seems as though Mr S didn't raise it until it affected his ability to get a loan sometime later.

I appreciate Mr S has said he was having some personal difficulties at the time, but his account shows it was still being used to make payments to gambling merchants for some months after the original issue, so I think he was in a position to continue to deal with Santander about the outstanding debt.

I've also thought about Mr S's assertion that he didn't receive any correspondence from Santander at his address. Santander's usual practice for an outstanding debt would be to write to Mr S on several occasions. They've confirmed they wrote to Mr S and there's no reason for me to think those letters weren't sent by Santander to Mr S's current address at the time.

My current thoughts here are that as I haven't been able to assess any evidence that Mr S was originally entitled to the funds taken back by V, I can't fairly say that any chargeback would have likely been successful. Without further evidence to show Mr S had legitimately won those funds, I'm currently minded not to uphold the complaint.

Santander's offer of £200 for the lack of chargeback request at the time is, I think, a suitable way for them to recognise the lack of service here. I'm not currently intending to ask Santander to do anything further.

The credit reporting on the debt by Santander requires them to accurately record the position of any repayments, which it appears they have done. So, without evidence that Mr S was entitled to those funds, the debt required repaying because he'd utilised those funds before they were taken back by V. I'm currently not intending to ask for any changes to the reporting.

Neither party responded to my provisional decision or a reminder about the closing date to receive any further responses. I noted that Mr S was in communication with our service during this period on another matter using the same contact details. I'm satisfied he's received the provisional decision and had an opportunity to respond.

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, and as neither party had anything further to add, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

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 S to accept or reject my decision before 2 June 2023.

David Perry
Ombudsman