

The complaint

Mr C complains that Santander UK Plc ('Santander') didn't do enough to help him with a dispute about two payments taken from his current account.

What happened

Mr C entered into agreements with separate merchants to hire cars on two occasions in late 2022. He then became aware the merchants had taken subsequent payments from his current account with Santander. Those charges related to an unpaid congestion charge as well as a parking fine (and administrative charges on both) - £115 and £120, respectively.

On 15 October 2022 Mr C asked for Santander's help in recovering those sums. He said the payments had been taken without his authority and he'd started the process of appealing the unpaid congestion charge.

Mr C and Santander corresponded about supporting evidence he could provide. Ultimately, Santander didn't think it had sufficient evidence to pursue chargeback claims, so it told Mr C it wouldn't help further.

Dissatisfied with how Santander had handled matters, Mr C raised a complaint with it, which was recorded on 30 November 2022.

Santander issued a final response to Mr C on 2 January 2023. It maintained that it hadn't received sufficient evidence from Mr C to justify it pursuing the matter under the chargeback process. It accepted the level of service it had provided Mr C fell below the standard he could reasonably expect, so it paid him £50 compensation by way of an apology. Santander offered to reconsider its position if Mr C was able to provide further information.

Santander considered a subsequent submission from Mr C and issued a follow up response on 7 March 2023. It had decided not to pursue Mr C's claim of the transaction for £115 because it didn't meet the criteria for a successful chargeback. It also said that Mr C's claim in relation to the payment of £120 was still being reviewed as he wished to submit further evidence.

Ultimately, Santander attempted one chargeback, but it was defended. It subsequently declined to help further in respect of either transaction. It had however, paid Mr C a total of £150 compensation in respect of service issues by this point.

Mr C referred the matter to this service in April 2023. He said that the transactions in question had been carried out without his authorisation and constituted theft. He said that Santander ought to have helped him to recover the associated sums and that it provided a poor level of service by, for example, not giving him updates or returning his calls.

Our investigator didn't uphold the complaint. They said that Santander had attempted a chargeback for the unpaid congestion charge, but the merchant had defended it, at which point Santander had decided not to pursue matters further. They considered examples of hire agreements as well as what MasterCard guidance says about that type of transaction.

Having done so, they thought that a chargeback wouldn't have had a reasonable prospect of success if Santander had pursued one.

Our investigator said that Santander had declined to attempt a chargeback in relation to the transaction for £120 as Mr C had not provided it with sufficient supporting evidence. They noted that Mr C had disputed that this was the case, suggesting that Santander had provided an incorrect email address for him to send evidence to.

Our investigator invited Mr C to supply the evidence in question. Based on what Mr C had provided, as well as information on the merchant's website, they found that Mr C had likely agreed to the merchants being able to pay fines he'd incurred whilst on hire, and that they were allowed to recover sums from Mr C. They therefore found that Mr C's chargebacks likely wouldn't have succeeded even if Santander had pursued them.

Lastly, our investigator accepted that Santander had provided Mr C with poor service at points, but they ultimately considered that the £150 compensation Santander had paid Mr C in total was a sufficient amount in the circumstances.

Mr C said, in summary;

- the merchants had acted illegally, without following the process and guidance issued by the body which had applied the fine;
- he'd provided a copy of the rental agreement in question but unsigned documents are 'inadmissible' as evidence;
- the charges applied are not representative of costs incurred; and
- he agreed that the compensation paid for poor service was fair, but he'd like to see Santander's processes changed.

Our investigator pointed out that our service is limited simply to determining whether Santander had handled Mr C's request for a chargeback fairly, so we would not give a perspective on some of the points he'd made, such as whether the merchant had acted illegally for example.

Mr C asked for an ombudsman's decision on the case. He also provided guidance issued by the Financial Conduct Authority ('FCA') about action banks should take in cases where unauthorised payments have been taken from customers' accounts.

The case has been passed to me to decide what should happen.

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.

From what Mr C has said it's clear that he feels strongly about what's happened. He's made a number of detailed submissions in relation to the complaint which I've carefully considered in their entirety. My decision, however, will focus on what I consider to be the key issues, so I won't necessarily mirror the level of detail in Mr C's submissions.

In considering what I believe to be fair and reasonable in all the circumstances, I'm required to take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time. That includes, for example, the

FCA guidance Mr C has referenced, amongst other things.

When the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

Mr C has made a number of points about the legality of the charges he contests as well as the conduct of the merchants involved.

This service is an informal alternative to the courts and our powers to investigate these matters aren't without limit. In the context of this complaint, I can consider whether Santander has handled Mr C's claims and subsequent complaint fairly. I can't however, comment on the conduct of the merchants with which it's clear Mr C has a dispute – they're not party to this complaint and even if they were, I think it's unlikely they come under this service's jurisdiction. I also don't have the power to ask Santander to change its processes – this service doesn't have a regulatory function.

Mr C has also referred to the transactions as 'fraud' and 'theft'. But I think it's clear that Mr C knows why the transactions in question were applied. It seems, however, that he has a dispute with the merchants about whether they should have taken the payments.

For this reason, I wouldn't have expected Santander to have treated the transactions which Mr C disputes as having been potentially fraudulent, or as if a theft had occurred. Rather, given that the transactions were taken from Mr C's current account with Santander, I'd expect it to consider the appropriate processes available to it in helping Mr C to potentially recover the costs he disputes.

In this case, that's chargeback. So, my decision will focus on whether or not Santander handled Mr C's chargeback claims fairly.

Chargeback is a voluntary scheme under which a bank can attempt to get a refund for goods or services paid for using a credit or debit card. The scheme is subject to strict rules and attempts can be defended by the merchant or supplier. The chargeback scheme is voluntary, so it's not a legal right, and there's no guarantee of success.

Although I might consider it good practice to attempt a chargeback, there's no obligation for Santander to have done so – despite Mr C's request – particularly if it doesn't consider there to be a reasonable prospect of success.

Santander has said that it attempted one of the two chargebacks Mr C asked for, but it was defended by the merchant. It hasn't been able to show this service details of the attempt, nor the defence that was presented. In any event, I wouldn't necessarily have expected Santander to have attempted either chargebacks, because I don't think they would've had a reasonable prospect of success. I'll explain why.

The chargeback rules are set out by the scheme administrator, which in this case is MasterCard. The rules in place at the time have a section which refers specifically to 'Addendum disputes'. It covers situations whereby customers dispute transactions that happen after a valid transaction involving the same merchant and cardholder had already taken place.

I think that's clearly the situation here – Mr C accepts that he entered into two agreements to pay for the hire of vehicles. He disputes subsequent transactions in relation to the same agreements with the same merchants.

The notes in relation to this condition say;

“Cardholders are responsible for valid addendum charges. Examples include, but are not limited to, meals that were signed for by the cardholder but not included in the final hotel folio or for parking tickets/traffic fines issued while the vehicle was in the cardholder’s possession.”

I think that the charges in dispute here come under this rule. And I also don’t think it’s in dispute that the charges were incurred whilst the vehicles were under hire and in Mr C’s possession. So, I don’t think that Santander had a reasonable prospect of success in pursuing either chargeback given what the relevant rules say about the charges Mr C sought to dispute.

Additionally, and for the avoidance of doubt, I don’t think Mr C’s chargebacks would’ve had a reasonable prospect of success in any case. Broadly speaking, I say this because I think that the evidence presented shows that Mr C had given authority for the merchants to apply for the sums they did.

Mr C has provided a copy of one of the rental agreements. Both the agreement and the associated terms are clear that by entering into the agreement Mr C accepted that he would pay the merchant for parking fines/ fees/ penalties and associated administrative costs incurred during the rental period. Lastly, the agreement explicitly said that Mr C authorised the merchant to charge the card he provided for a rental deposit for all amounts which became due after the return of the vehicle.

We haven’t seen a copy of the other agreement, however, our investigator found a copy of what they thought was likely to be the same terms that Mr C would’ve agreed to on the merchant’s website. Those terms said that the merchant was allowed to pay the charge and/ or fines, apply an administration charge and then recover the associated cost from the customer’s debit card.

I don’t think it’s in doubt that Mr C’s agreement included the same conditions. I’ve seen correspondence between Mr C and the merchant regarding his dispute in which Mr C accepts that his agreement allowed the merchant to apply for the sums it did. Rather, he disputes the legality of the merchant having done so.

Overall, I think it’s evident that in the case of both rental agreements Mr C had agreed to pay fines incurred during his use, as well as administrative charges. I also think it’s clear that Mr C agreed for both merchants to debit those sums from his bank account. Having carefully considered the various and very specific chargeback reason codes that Santander could’ve attempted to use given what Mr C had presented, I don’t think a chargeback would’ve succeeded on that basis.

Given all of the above, I find that Santander reached a fair outcome on Mr C’s claims.

Lastly, Mr C made points about Santander having provided a level of service which fell below the standard he could reasonably expect during the course of his claims. From what Santander’s said, I think it accepts that’s the case. Mr C accepted our investigator’s finding that Santander had adequately compensated him for service failings. I agree that the £150 paid by Santander is reasonable given the examples of poor service Mr C gave. So, I make no further award in respect of this as it’s clear enough has already been done to put things right.

My final decision

For the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 March 2024.

Stephen Trapp
Ombudsman