

The complaint

Mrs W complains about how Santander UK Plc dealt with her chargeback claim in relation to immigration advice and assistance services.

What happened

In 2022 Mrs W paid a third party (“the merchant”) to obtain visas for herself and her husband to go and live in another country. She made four payments to the merchant with her Santander debit card. The first three payments were made in April and May 2022, and the fourth was in early 2023. In May 2023, when she realised that she was not going to receive the visas she had wanted, she asked Santander to refund her payments.

Santander wrote to Mrs W to ask her for some further information, but she says that she never received the bank’s letter. Then in September, Santander wrote to her to tell her that her chargeback claim about the first three payments had been unsuccessful because she had raised the matter out of time – it said it had been more than 120 days since the transactions. Santander did not mention the fourth payment. Being dissatisfied with that outcome, Mrs W brought this complaint to our service, represented by her husband, Mr W.

Meanwhile, in August, Mrs W had also complained to Santander about poor customer service during the chargeback process, such as managers not keeping their promises to call her back. Santander upheld her complaint about that and paid her £250 compensation. That issue is also part of her complaint with our service.

Our investigator agreed that Mrs W had left it too late to challenge the first three payments. But she pointed out that the fourth payment, which Santander had apparently failed to consider, had still been recent enough to be disputed under the chargeback rules. And she thought that a chargeback would have succeeded, because the merchant had failed to provide the service the fourth payment had specifically been for, which was a skills assessment. So she recommended that Santander pay Mrs W the value of the fourth payment, and also increase the £250 compensation to £500.

Santander did not accept the investigator’s decision (I will explain why below). Instead, it offered to pay Mrs W half of the fourth payment, £769, as a gesture of good will. Because agreement could not be reached, this case was referred for an ombudsman’s decision.

I wrote a provisional decision which read as follows.

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.

Having done so, I am minded to say that Santander’s latest offer is fair. I will explain why.

When a chargeback dispute is raised on the ground that services were not provided, and the merchant did not specify when the service would be provided, then the time limit for bringing

the claim is 120 days from the date of the transaction. Where the merchant specified a date on or by which the service would be provided, then the time limit is 120 days from the latest anticipated performance date specified by the merchant. But where the ground is that ongoing services ceased or were interrupted, the time limit is 120 days from when the cardholder became aware of that, provided that it is still no later than 540 days from the date of the transaction. In an internal memo dated 14 September 2023, one of Santander's case handlers acknowledged that the 540-day time limit applied and was due to expire in October, so I infer that Santander (at least in September) treated Mrs W's claim as being that the merchant had been supplying a service until a certain point, and had then stopped.

The four payments Mrs W made were (in sterling) as follows:

1. £1,132:40 on 27 March 2022
2. £512 on 10 April 2022
3. £2,200 on 24 April 2022
4. £1,536:75 on 31 January 2023 (transaction settlement date 1 February)

Mrs W asked Santander to open a chargeback dispute for all four payments in May 2023. 540 days after the first three payments is September and October 2023, so these three payments were still within the time limit as long as it was also less than 120 days since the date when Mrs W realised that the merchant was no longer providing a service. Mrs W provided Santander with a chain of emails between herself, her husband and the merchant in which it appears that Mr and Mrs W came to the conclusion that the merchant was no longer assisting them in April or May 2023, so I am satisfied that all four transactions would have been eligible for consideration under the chargeback time limit on that general ground.

However, on 12 May 2023 the merchant finally offered Mrs W a choice of two visas for which it said she was eligible, and invited her to choose which one she wanted. The relevant email was among the emails which Mrs W sent to Santander in support of her claim, so Santander was aware of it. I think this evidence would have made it impossible for Santander to justify raising a chargeback dispute on the ground of the overall service having either ceased or not been provided at all, given that that the merchant was actually still providing a service after all.

Mrs W has explained that neither of those visas were what she had paid for; she had wanted a third kind of visa. But that would not qualify under the ground I have been discussing so far. I've considered whether it could qualify instead under the ground "services not as described", but the time limit for that is 120 days from the date of the transaction, so only the fourth payment would have been eligible. And I have read the document titled "Service Order Confirmation Form", dated 27 March 2022, and it does not specify that the merchant would obtain for Mrs W a particular kind of visa. It only states that the merchant will provide advice and assistance in obtaining permanent residency. Since both of the visa types mentioned in the 12 May email were also routes to permanent residency, I am unable to conclude that this chargeback reason was made out due to the merchant ceasing to assist Mrs W.

However, there was another reason why the investigator thought that a chargeback dispute about the fourth payment may have succeeded. The fourth payment was specifically for a skills assessment to be carried out, as part of the visa application process. It wasn't for the overall advice and assistance service generally. I've seen emails which make it clear that that is what the fourth payment was for. Mrs W says that no skills assessment was ever arranged.

Santander does not deny that. Instead, its stance about that issue is that it is unlikely that the chargeback deadline would have been met. It said that the deadline for a claim based on a skills assessment not being arranged is 120 days from the date of the transaction (because it is not a case of an ongoing service being interrupted). It said that 120 days from the date

of the payment is 31 May 2023.¹ It argued that although Mrs W asked Santander to open a chargeback for the fourth payment on 24 May, simply making that request is not enough to meet the deadline. Rather, it was necessary for Santander to open a chargeback dispute with the merchant by that date, which Santander would only have done if it had first received enough evidence to justify doing so. Santander says that in May it had still not received enough evidence to open a dispute – because it wasn't clear that the service was not going to be provided, or when it was supposed to have been provided by – and so there was never any real prospect of a chargeback dispute being opened in time.

On 21 June 2023, Santander wrote to Mrs W to ask for more information. Specifically, it asked for:

“Recently dated confirmation from the merchant you are due a refund and the amount you are due. Terms and Conditions with cancellation policy. Date you expected to receive the service.”

Of course, by the time that letter was sent, the deadline had already expired three weeks earlier. I expect that delay is because Santander's chargebacks team had other cases too, in a queue, and so it took time to get to Mrs W's case. I have considered upholding this complaint on the basis that Santander should have identified that Mrs W's case was very close to the deadline, and should have given it priority and asked her for what it needed much earlier than it did. But I still think that a delay of one week would not have been unreasonable, and the deadline would most likely still have been missed. So on balance, I don't think it would be fair to uphold this complaint on the ground that Santander should have sent that letter early enough for Mrs W to have time to reply before 1 June.

I will therefore judge Santander's actions based on what evidence it already had in May 2023. That is the various emails provided by Mrs W, to which I have already referred. Unfortunately, although these clearly show that the merchant was going to arrange a skills assessment and this is what the fourth payment was for, they do not indicate when the assessment was going to take place, nor do they say that the merchant is no longer going to do it. So Santander took the view that this was not enough evidence to prove that the merchant had failed or refused to provide the service; nor did it show that the 120 day time limit ran from a later date than the date of the payment. It is not my role to substitute my own opinion for Santander's, but rather to evaluate whether Santander's decision was one which it was reasonably entitled to make. I'm afraid I think that Santander did act reasonably in not immediately opening a chargeback dispute with the merchant based solely on this evidence, and it follows that I am unable to uphold this complaint about that.

Turning to the customer service part of this complaint, I agree with my colleague's opinion about this issue and I agree with her proposed compensation. I was therefore minded to tell Santander to pay Mrs W an additional £250. However, since Santander's latest offer to pay £769 as a gesture of good will goes further than that (even though Santander did not agree that its customer service was so bad as to merit £500 compensation), I will simply endorse that offer.

Responses to my provisional decision

Santander accepted my provisional decision. Mr and Mrs W did not reply. So there is no reason for me to depart from my provisional findings, and I confirm them here.

¹ In fact, under the chargeback rules time is counted from the transaction settlement date, 1 February, so 120 days later was 1 June.

My final decision

My decision is that I uphold this complaint in part. I order Santander UK Plc to pay Mrs W £769.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W (or Mr W on her behalf) to accept or reject my decision before 24 July 2024.

Richard Wood
Ombudsman