

Complaint

Mrs B has complained that Santander UK Plc (“Santander”) unfairly failed to block gambling transactions from her current account in circumstances where other institutions did so.

Background

Mrs B made a number of gambling transactions on her Santander current account. This was after her main bank account provider had blocked such transactions being made from that account. As I understand it, during the period Mrs B made gambling transactions (the bulk of it was between January 2023 and May 2023) she ended up losing her annual bonus as well as a car accident pay out.

In May 2023, once the funds in question had been lost, Mrs B complained to Santander. Santander reviewed Mrs B’s complaint and said that Mrs B didn’t get in contact to put in place any transaction blocks on her account. So it therefore processed the transactions that had been authorised by her. As a result, it didn’t think that it had done anything wrong or uphold Mrs B’s complaint. Mrs B remained dissatisfied at Santander’s response and referred her complaint to our service.

One of our investigators reviewed what Mrs B and Santander had told us. And he thought that Santander hadn’t acted fairly and reasonably towards Mrs B. So he thought that it should pay Mrs B £750 for the distress and inconvenience that Mrs B experienced.

Santander disagreed with our investigator’s assessment and asked for an ombudsman to look at this complaint.

My provisional decision of 12 February 2024

I issued a provisional decision – on 12 February 2024 - setting out why I was not intending to uphold Mrs B’s complaint.

In summary, I wasn’t intending to uphold Mrs B’s complaint because:

- Santander wasn’t aware of Mrs B’s circumstances at the time;
- Mrs B wasn’t borrowing funds from Santander to make the transactions in question;
- Mrs B was making a number of small transactions;
- It wasn’t clear that Santander hadn’t sent Mrs B messages in line with its process, the available evidence did not support that Mrs B receiving such messages would have stopped her from making the transactions in question.

Responses to my provisional decision

Santander confirmed that it acknowledged my intention not to uphold the complaint and it didn’t provide anything further that it wished for me to consider.

Mrs B disagreed with my provisional decision stating:

- She did not receive any messages from Santander;
- She has been diagnosed with a medical condition and Santander will not update her records until the conclusion of this complaint;
- Santander should have procedures in place to support and flag up overactive activities and that's how she was offered assistance by her main bank;
- Santander should have policies in place for vulnerable people and to establish a source of income and affordability.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully considered everything included the response to my provisional decision, I've still not been persuaded to uphold Mrs B's complaint. I'll explain why in a little more detail.

I want to start by saying that I'm sorry to hear about Mrs B's health condition and the fact that family pressures caused her to relapse into problem gambling. It's clear that Mrs B has gone through an extremely difficult time and that since the transactions in question she has been diagnosed with medical conditions. And I'm really sorry to hear about the effect what has happened has had on her household finances.

However, even though I remain extremely sympathetic to Mrs B's situation, it is only fair and reasonable for me to uphold a complaint in circumstances where a financial firm has done something wrong and in doing so caused a customer to suffer a loss that they wouldn't have done.

So it's not enough for me to be able to say that Santander could have done more, I also need to be persuaded that Santander doing more in this instance, would have made a difference to Mrs B's position. I don't think I can safely say that is the case and there are a number of reasons that lead me to think that this is the case.

Firstly, there doesn't appear to be any dispute that Santander wasn't aware of Mrs B's medical condition, her family situation, or her problem gambling prior to these transactions having been made. I appreciate that Mrs B has provided further confirmation of her medical diagnosis.

I appreciate that Mrs B says Santander says it will not record this is the case until after the conclusion of this complaint. I don't know if this is the case or whether this means that Santander will take no account of Mrs B's circumstances until after this complaint is concluded. But, in any event, I would encourage Santander to acknowledge the information Mrs B has supplied as soon as possible and as it now knows of Mrs B's situation, I would expect this to feature in its decisions going forward – where it is relevant.

However, it remains the case that Mrs B's diagnosis did not take place until after the events here took place and Santander was not aware of this between January 2023 and May 2023. I think that this is important because if Santander was aware of any of these factors prior to Mrs B getting in touch, in May 2023, then I would have expected it to have taken this into account in its dealing with her – in other words, I would have expected it to take this into account when processing Mrs B's instructions. But as Santander wasn't aware of this, I cannot reasonably say that it should have taken this into account.

Secondly, I'm also mindful that Mrs B was gambling her own funds and not borrowing funds from Santander to make these transactions. Had Santander been lending these funds to

Mrs B, I would have expected it to have taken reasonable steps in order for it to be able to make an informed decision on whether Mrs B could afford to repay any funds being lent. But as Mrs B was gambling her own funds the starting position is that it was expected to process Mrs B's transactions as long as she had authorised them. And there doesn't appear to be any dispute that Mrs B did authorise these transactions. For reasons, I'll come onto, I think that this is important.

Furthermore, while it is fair to say that the total amount gambled could be described as large, I don't think that it can be reasonably said that the individual transactions were for large amounts. So while I accept that (for whatever reasons) Mrs B's main bank might not have allowed her to make gambling transactions, I can understand why these particular individual transactions didn't flag up on Santander's systems. I'm also mindful that not all of the transactions would have flagged up as gambling ones.

In any event, given the nature of the transactions concerned, I understand that Santander accepts its systems could have flagged up the cumulative nature of the transactions and it could have sent text messages about this. Our investigator concluded that Santander didn't take further steps after Mrs B's January 2023 transactions and that if it had taken such steps, this could have prevented Mrs B's losses.

I've thought about our investigator's conclusions. However, I don't think it would be fair and reasonable for me to award compensation just because Santander doing something could have resulted in a different outcome. I need to be satisfied that further action from Santander would have led to Mrs B acting differently. And, in any event, I'm not persuaded that the available evidence here supports the conclusions that have been reached.

I firstly say this because Santander has not said it did not send Mrs B the text messages it perhaps ought to have done in such circumstances. It has said that it is unable to confirm that such messages were sent. This might appear to be semantics, but I don't think that not being able to confirm these were sent is the same as saying that they weren't in fact sent.

Equally, while I appreciate that Mrs B might not have no recollection of receiving these messages at the time and she has reiterated that she doesn't have any of them at this stage, I have to consider what she's said about being in a difficult place. And receiving such messages at the time is unlikely to have been at the forefront of her mind. So I don't think that it's as clear cut that Santander failed to contact Mrs B in the way that has been suggested.

In any event and even if Mrs B wasn't sent the messages in question, most importantly, I still need to consider what is more likely than not to have happened had Santander sent these messages. Our investigator concluded that Santander contacting Mrs B about her gambling transactions, in January 2023, could have prevented the ones being made after this from being made. It's not clear whether he thought that this would have happened, or whether he considered the merely possibility that further action from Santander could have made a difference entitled Mrs B to compensation.

Regardless of this, while I do accept that it's possible that Santander acting differently could have made a difference to Mrs B's position, I think that the available evidence suggests that this is unlikely and less likely than not. The first reason I say this is because there is no dispute that Mrs B authorised these transactions as, at the time at least, she wished to make them. So there is an argument for saying that if Santander had contacted Mrs B to enquire whether she wished to make these transactions, she would have simply confirmed that she did wish to do so. I say this while especially mindful of two things.

Firstly, Mrs B was making these transactions before she'd sought professional help. It could be argued that Mrs B might have sought professional help earlier if Santander had got in contact with her and blocked these transactions. Again I accept that this is possible, but I don't think that it automatically follows that Mrs B would have sought professional help had Santander blocked her transactions. I also have to consider this possibility in light of her actions suggesting that it is less likely than not that this the case.

Indeed Mrs B has referred to another bank – her main one – having blocked her transactions. I don't know whether this was done proactively, or maybe after Mrs B told that bank, at least some of, what she's told us now. But I have to conclude that she tried to make gambling transactions with more than one provider.

It also appears as though Mrs B was transferring funds into her Santander account with the specific purpose of making the transactions she did. I think that this is likely as a result of her other bank refusing to process such transactions. So I have to consider that Mrs B was attempting these transactions after having managed to circumvent whatever measures that had already been put in place to prevent her gambling.

Equally, at best, Santander could only have refused to process these transactions. I know that Mrs B has said that Santander should have established a source of income and affordability. But I don't think that that Santander could reasonably have carried out an income and expenditure based affordability assessment of whether Mrs B could make transactions using what were her own funds.

Furthermore, even though Santander wasn't required to do this but did, even if such an assessment had been carried out and shown Mrs B couldn't afford these transactions, Santander wouldn't have had the authority to block, or embargo, Mrs B's funds, or prevent her from transferring them to another account with a different provider. And given the circumstances of how, at least some of, these funds ended up with Santander in the first place, there is a strong argument for saying that this is indicative of what Mrs B would have done if Santander had tried to block these transactions without Mrs B's permission, and contrary to her actions in authorising them in the first place.

So I think that Mrs B's actions, in transferring the funds in the first place, suggest that she would more likely than not have confirmed that she wished to make the transactions, if Santander had contacted her. And if Santander had refused to process the transactions, the available evidence suggests that it's more likely than not that Mrs B would simply have transferred the funds elsewhere to make the transactions.

In these circumstances, I think it's unlikely that Mrs B would have instead sought professional help for her relapse, rather than sought to gamble the funds, had Santander got in contact with her in or around January 2023. As I've explained, I really do sympathise not only with Mrs B's situation but everything that she has gone through. And I'm really sorry that she's in a difficult financial position.

In my view, Mrs B's experience identifies a genuine consumer protection problem in relation to gambling as, on the face of things, a gambling company appears to be permitted to keep accepting money from a customer even where there are substantial previous losses. I think that vulnerable customers would be assisted by gambling companies doing far more than they currently do to check that customers can sustain losses, irrespective of the source of funds.

Nonetheless, ultimately what I've had to decide here is whether Santander should have done more and whether it doing more in this instance would have made a difference to Mrs B's position. And I can't simply transfer liability for the fact that it may be the case that the

gambling companies should have prevented Mrs B from spending her funds in the way she did. In relation to Santander's actions, Mrs B was spending her own money and while I appreciate that Mrs B doesn't think that this should make a difference, it does in relation to the rules and regulations that apply to a financial institution such as Santander.

Santander wasn't required to and couldn't reasonably be expected to assess whether Mrs B could afford to spend her own money in the way that she was seeking to. And while I appreciate what Mrs B has said about some financial institutions blocking transfers that she made, in circumstances where I can't see Santander had the authority to do that here, I can't reasonably say that Santander should have blocked Mrs B's transactions.

Furthermore, even if it had done more in this instance, the real problem here is that the gambling companies would have accepted Mrs B's funds either way - the transactions going through in this way suggest that this is the case. So I don't think that further action from Santander would have prevented Mrs B from moving the funds in question and, in any event, making the transactions.

Therefore, having carefully considered everything, including the responses to my provisional decision, I'm not upholding Mrs B's complaint. I appreciate this is likely to be very disappointing for Mrs B – especially bearing in mind our investigator's initial conclusions. But I hope she'll understand the reasons for my decision and even though I've not upheld her complaint she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained above and in my provisional decision of 12 February 2024, I'm not upholding Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 2 April 2024.

Jeshen Narayanan
Ombudsman