

The complaint

Mr and Mrs W complain Santander UK Plc have acted unfairly by not refunding the payment they made to a company using their debit card, to release them from their timeshare.

What happened

A professional representative has supported Mr and Mrs W in making this complaint, but for simplicity I'll refer to their submissions as having come from Mr and Mrs W.

In August 2020 Mr and Mrs W entered an agreement with a company I'll refer to as Company A to release them from their timeshare. They made a part payment of £5,441 using their Santander debit card.

Following this Mr and Mrs W say they heard nothing further from Company A, even after attempting to contact them directly. As a result, they contacted Santander in December 2021 in an attempt to claim a refund.

They say they didn't hear back from Santander, so chased the bank in November 2022. At which point Santander told them their claim didn't meet the requirements under the dispute mechanism, known as "chargeback".

In March 2023, as they'd received nothing further from Santander, Mr and Mrs W brought their complaint to this service where we asked the bank to look into matters. Santander did but concluded the claim had been raised too late. They said Mr and Mrs W had 120 days from the payment to raise a chargeback, but as this time had passed, they weren't able to pursue the claim. They later added there was also nothing to show the chargeback had been raised within 540 days of the payment either – another requirement under chargeback.

Mr and Mrs W disputed this, providing evidence they'd contacted Santander on 14 December 2021 and that the bank acknowledged this the following day.

An Investigator here reviewed matters and initially concluded that had the chargeback been raised in December 2021, it would likely have been successful as Mr and Mrs W didn't receive the service they'd paid for, and this would have been within 540 days of the payment.

Santander didn't agree. They provided additional evidence to show they'd asked for further information from Mr and Mrs W in December 2021, but as they'd not received a response the matter was closed. They also noted they'd first raised the claim more than 120 days after the latest anticipated performance date of the contract.

Our Investigator reconsidered matters with this information, and in doing so concluded Santander hadn't acted unfairly by not pursuing the chargeback claim. Saying the claim had been made too late.

Mr and Mrs W didn't agree and said they'd not received Santander's request for further information in December 2021.

With no resolution, the complaint has been passed to me to decide.

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 think it would be helpful to explain, in this decision I'm only able to consider how Santander handled the dispute Mr and Mrs W raised with them. I'm not able to consider the actions of Company A, as that isn't within the jurisdiction of this service for these types of complaints.

In this case, the payment of £5,441 was made using a Santander debit card. Mr and Mrs W also made a further part payment using a separate credit card – but as that wasn't held with Santander, the only avenue available to Santander to claim a refund was through the process known as a chargeback.

Chargebacks are governed by rules set by the card scheme to which the consumer's card belongs. In this case, there's some dispute over whether the debit card Mr and Mrs W used was a Visa or Mastercard. Having looked through the information we hold, both our Investigator and Santander have referenced both card schemes. However, whether the card is a Visa or Mastercard, the rules relating to both aren't materially different in Mr and Mrs W's case.

Chargebacks are not guaranteed to succeed, the recipient of the funds (Company A in this case) can choose to challenge or defend a chargeback if they don't think it is valid. A consumer also cannot require their card issuer to attempt a chargeback, as it isn't a right. However, our service does consider it good practice to do so, if it is within the time limits and there is a reasonable prospect of success.

Mr and Mrs W wanted to dispute a payment made in August 2020 because they say the company they paid didn't do as it should – which was to release them from their timeshare. In fact, they say they heard nothing further from the company, after making the payment.

Mr and Mrs W first raised this dispute with Santander on 14 December 2021. Santander have now shown they wrote to Mrs W and requested further information – but because they received no response, they closed the dispute and didn't attempt to raise a chargeback. Mr and Mrs W say they didn't receive this letter and also question why the request wasn't sent to their representative. While I appreciate this would have been frustrating, I don't think it changes the outcome here.

I say this because both Visa and Mastercard scheme rules include provisions relating to how long after a transaction takes place, it is permissible to raise a chargeback. Where a payment has been made for goods or services, and those services have not been provided, as is the case here, both sets of rules say that in these circumstances a chargeback must be attempted within 120 days of the last date the cardholder expected to receive the service. The rules also indicate that where no specific timeframe is given for when a service is meant to have been provided by, a chargeback needs to be made within 120 days of the date of the card transaction.

Mr and Mrs W say they didn't receive a contract from Company A, so we can't say when the service they'd paid for should have been received. As such, the relevant deadline would be 120 days from the date of the card transaction. Mr and Mrs W didn't contact Santander until 14 December 2021, far in excess of the 120-day timeframe. So it would follow that I don't think Santander have treated Mr and Mrs W unfairly by failing to pursue a chargeback, as it would have been too late, based on this timeframe.

However, Mr and Mrs W have provided a templated version of a contract with Company A which says:

“Our trusted third party legal partners will endeavour to extricate the above Timeshare ownership as quickly as possible however the client acknowledges it could take up to but no longer than 12 months from receipt of your balance payment, or up to but no longer than 12 months from the end date of your last holiday via the above timeshare ownership”.

It goes on to say that if these timeframes are not met a full refund guarantee will be offered.

While I think it would be reasonable to use the payment date, as explained above, I've also thought about whether the wording in the template contract would have made a difference to the outcome of this complaint, but for the reasons explained below I don't think it would.

It's not entirely clear when Mr and Mrs W made the payment of £5,441 as several dates have been mentioned. The bank statement shows the payment clearing the account on 16 August 2020 and the bank have recorded the value date as 17 August 2020. But the detail on the statement entry suggests the card payment was made two days earlier – on the 14 August 2020. This is the date our Investigator has used and I agree seems to be the relevant date here.

Mr and Mrs W have shown they made two payments to Company A, one on 7 August 2020 using a separate credit card, and the second using their Santander debit card. They also say they last had contact with their timeshare provider in 2009. As such, I think it's reasonable to take the 14 August 2020 as the date the balance was paid and latest date for the purposes outlined above.

Had the contract performed as it should, Mr and Mrs W could reasonably have expected to be released from their timeshare at the latest by 14 August 2021. Under the card scheme rules Santander would have then needed to raise the chargeback within 120 days from that date, by 12 December 2021.

Mr and Mrs W first contacted Santander, by email, to raise their chargeback claim on 14 December 2021, which means it was already too late for Santander to raise the chargeback at that point, so I don't think they acted unfairly in not doing so.

However, even if the card scheme would have taken either of the later dates outlined above, I don't think it's fair to say Santander failed to provide a satisfactory standard of service in not raising the chargeback either.

I say this because, the email was sent to Santander just after 2pm on 14 December 2021. There was nothing within the email content that would, or should, have highlighted to Santander the urgency in which the chargeback needed to be raised and as Santander wrote to Mrs W a few days later requesting further information, they weren't given everything they needed to proceed on that day in any case. I also think it's reasonable to expect an email to take a few days to be reviewed and acted upon. In addition, it appears the email was sent to the wrong team in any event, meaning it needed to be passed on.

Taking all of this into account I think it likely Mr and Mrs W's chargeback claim would have been declined. Firstly, in the absence of their contract it seems reasonable to say the claim was raised well outside the timeframe from the payment date. But even assuming the template contract was accepted by the card scheme, I think Mr and Mrs W raised their claim too late with Santander for them to have any real prospect of success. Santander didn't have

everything they needed or sufficient time to raise this, and as such it would more likely than not have been rejected as a result.

Given this, I don't think Santander acted unfairly by not attempting a chargeback after 14 December 2021, because by this point it was too late. And I don't think that was due to any delays caused by Santander.

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 W and Mrs W to accept or reject my decision before 13 March 2025.

Victoria Cheyne
Ombudsman