

complaint

Mr E paid a foreign cheque into his account with Santander UK Plc. He complains that, after Santander told him he could withdraw the money, the cheque was returned unpaid and the bank debited his account without telling him.

background

Earlier this year, Mr E was contacted by a third party who told him he'd been selected to act as a personal shopper. The third party explained he would send Mr E some money by cheque. Mr E was told to pay the cheque into his account, withdraw the money after it had cleared, take some as commission, and pay the rest to someone else. He was told to do this and then report on the service he received.

A few days after Mr E had paid the cheque into his account, he went back into the branch to ask if he could withdraw the money. He says he was told he could safely withdraw the money the following day – so he did. Mr E then paid it to the person he had been asked to pay it to via Western Union. But a few days later, realised his account was heavily overdrawn – because Santander had debited the money after the cheque had been returned unpaid.

Santander says, in summary, that when Mr E paid in the cheque, they gave him a document explaining how foreign cheques are processed, and what might happen if a cheque isn't paid. Santander also says it's probable that when Mr E went back to ask about the cheque, he was told the money would be available after six working days.

The investigator concluded that, while Mr E had been the victim of a scam, Santander hadn't acted incorrectly. She explained that Mr E was given the necessary information when he deposited the cheque, which explained that while the money would appear in his account after six days, there was a possibility it could still be taken back. Because she felt Santander had followed its procedures correctly, the investigator didn't feel able to ask them to refund the money.

Mr E wasn't happy – he felt, that if there was any risk, the money shouldn't have been credited to his account in the first place.

my provisional decision

I issued a provisional decision explaining that I needed to decide whether Santander acted fairly overall, and whether they gave Mr E enough information for him to make an informed decision on whether or not to withdraw the money.

In order to consider this, I needed to look at two things:

- What happened when Mr E paid in the cheque
- What happened during Mr E's second visit

Mr E's first visit

Both Santander and Mr E agree that, when he went into the branch to deposit the cheque, they gave him a copy of their foreign cheque deposit terms and conditions.

Those terms and conditions say:

"1.4 Unpaid Cheques

If the cheque is returned unpaid and we have already credited your Account, we will debit your Account with the value of the cheque, using the exchange rates which apply at the date of debit. This means that your Account could be charged a different amount to the amount you originally received."

The terms and conditions also explain what happens with fraudulent transactions:

"4 Fraudulent Transactions

(c) In some countries, Foreign Cheques paid by Negotiation or Collection can be declared fraudulent for a period of up to seven years. Should this happen, we may debit the proceeds of the cheque from your Account (or recover the funds from you if your Account is closed). In this case we may debit your Account with the value of the Foreign Cheque, using the exchange rates which apply at the date of debit. This means that your Account could be charged a different amount to the amount you originally received."

Paying in a foreign cheque can be done either by negotiation – where the money represented by the cheque is credited to the account but the cheque can still be returned unpaid – or it can be done by collection, where the bank will wait until the paying bank has paid the cheque before crediting the money to an account. In this case, the cheque was negotiated. This means the money would have shown as being available to be withdrawn – before the paying bank had made a decision about whether or not to pay it. Because Santander gave Mr E the deposit terms and conditions when he paid the cheque in, I'm satisfied they followed their procedure correctly and that they fairly brought this information to his attention.

Mr E's second visit

It's not in dispute that Santander told Mr E he could withdraw the money. Santander, however have said they can't be sure exactly what was said during the visit, but that it's likely they explained the cheque could take up to six days to clear. This would explain why Mr E withdrew the money the following day.

But Mr E has consistently said that he asked if he could take the money *against the cheque* and was told he could. He's also explained the member of staff didn't mention anything about the money not being cleared, or that there may be a chance the money could be taken back.

I find what Mr E says to be persuasive. Having carefully considered all that he has said, on balance I believe if Santander had made it clear when he withdrew the money that the cheque could still be returned unpaid, he wouldn't have taken it. I say this because an email exchange between Mr E and the third party shows Mr E was checking his account online. He couldn't see the money had cleared, so he didn't take it. Instead he went to the branch to check. In response to the question I believe Mr E then asked, it was for Santander to make it clear that if he withdrew the money, he did so at his own risk.

The cheque was for €3,920.00, which came to £3,242.45. But Mr E only withdrew £2,686.45. So in my provisional decision I considered that Santander should reimburse him with that sum, and re-work his account for any charges and interest it applied because of him withdrawing the money when he did.

In addition, I considered Santander should pay him an extra £150 compensation for the way it handled the situation.

the parties' responses

Mr E was happy with my provisional decision and accepted my recommendations.

Santander responded and said that the branch advisor would've made sure the foreign cheque terms and conditions were given to, and understood by Mr E during his first visit. Mr E doesn't dispute receiving this information and has said he didn't read it. So Santander are confident their staff member followed the correct process, and feel they cannot be held responsible for Mr E not reading what was given to him.

Santander have also explained that when Mr E went into the branch for the second time, the money was available for him to take – in line with the cheque clearing cycle. As they deal with a number of customers who deposit cheques every day, Santander feel it would be unfair for them to have to warn everyone that a cheque may still be returned.

Santander can't see they have acted incorrectly by allowing Mr E to withdraw the money, as he was fully within his right to withdraw it, and it was available for him to take.

Santander have also said at the time of deposit and withdrawal, Mr E believed he was dealing with someone genuine, so they do not believe he would've been concerned about the extended clearing on the foreign cheque timescales. They have also checked his online activity and have confirmed he checked his home page on several occasions – which showed when the money became available.

my findings

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

Having done this, I don't intend to depart from my provisional decision. I remain of the view that Mr E's complaint should be upheld for the reasons already given in my provisional decision. I'll explain why.

I've given careful thought to what Santander said. I explained in my provisional decision why I think the second visit to the branch and the emails between Mr E and the third party are so important. I agree the evidence provided by Santander shows that Mr E was checking his online banking throughout this period. Mr E has also confirmed he was doing this. The email correspondence between Mr E and the third party at the time also highlights to me that Mr E was being cautious about the funds in his account.

In an email to the third party dated Monday 30 January, Mr E said:

"...I will continually check and let you know the instant that the funds are cleared."

Another email was sent to the third party on 2 February 2017 which said:

"....I have looked on line and still the funds deposited have not yet cleared. I will go to the Bank a little later to check what is happening. Just to keep you informed;..."

In these emails Mr E talks about the funds being cleared. We also asked Mr E what happened when he went into the branch for the second time. He has consistently said that he asked if he could take the money *against the cheque* and was told he could. He's also explained the member of staff didn't mention anything about the money not being cleared, or that there might be a chance the money could be taken back.

Mr E's emails to the third party specifically talk about the cheque being cleared. And our service also sent an email to Santander following a call with Mr E in March 2017, where he had advised us he was told the cheque had cleared, which is why he withdrew the money.

As these both occurred nearer to the time of the event, I take them to be a true reflection of what was said. Because of this, I feel Santander should've done more to explain to Mr E, the consequences of withdrawing the funds from the account. I'm satisfied, given the cautious approach of Mr E with the third party that he would've waited before taking the money from his account.

my final decision

My final decision is that this complaint should be upheld. Santander UK Plc should:

- Reimburse £2,686.45 back to Mr E.
- Re-work his account for any charges and interest applied
- Pay him £150 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 12 February 2018.

Danielle Padden
ombudsman