

complaint

Mr A complains that Santander UK Plc debited his account by £40,000 without notifying him – and this caused his account to become overdrawn. He also complains that Santander didn't do a chargeback for him.

To settle matters he'd like Santander to refund the £40,000, cancel any fees associated with it and to rectify his credit history.

background

I set out the background to Mr A's complaint in my provisional decision. In that decision I also explained why I was intending to partly uphold Mr A's complaint. Below, I'll again summarise the background to Mr A's complaint and my provisional findings, so that all relevant information is in this one decision.

Mr A is helped in his complaint by his brother. Mr A hired a car from a car club (the merchant) and it was involved in an accident. Mr A thinks he was only required to pay the merchant an excess of £1,000 because the accident wasn't his fault. In support of this he provided a statement signed by the third party in which the third party accepted liability for the accident and damage to the hired vehicle.

Mr A discovered that the merchant debited £40,000 from his account for damage to the car. He's unhappy that Santander allowed this payment to go through without notifying him first. As a result his account is now significantly overdrawn. He also says he never authorised the merchant to deduct this amount. He says that when the merchant asked for his card details he was told this was a credit check. And he thought he'd only pre-authorised the merchant to cover the £1,000 excess he thought he'd agreed. He also complains that Santander didn't do a chargeback.

When our adjudicator looked into the complaint she didn't think Santander had done anything wrong. Mr A disagreed with the adjudicator's view and asked for an ombudsman's decision. In my provisional decision I said:

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

I'm sorry to hear about the difficult position Mr A finds himself in and I realise his account is significantly overdrawn due to the merchant debiting his account by £40,000. I must explain that I can only look at whether Santander has treated Mr A fairly and I can't assist him with his complaint against the merchant.

Mr A's initial payment

On his complaint form Mr A says he thought that when he put his card into the merchant's machine and entered his PIN, he was only authorising the merchant to deduct the agreed excess of £1,000. He also says the merchant told him it was for a credit check. I have no way of knowing what was discussed between Mr A and the merchant at the time. But I can't hold Santander responsible for any incorrect information Mr A was given by the merchant.

But when Mr A put his card in the machine and entered his PIN he was giving the merchant pre-authorisation to take money from his account for any charges that would be due under the car hire agreement. The merchant requests authorisation of a small amount and claims the full amount when due.

This type of payment is a guaranteed payment so I'm satisfied that Santander had no choice other than to honour the payment when the merchant claimed it – even though that meant Mr A's account became significantly overdrawn. Mr A pre-authorised the payment to the merchant so I can't say that Santander acted unfairly when it didn't notify him before it debited his account.

chargeback

The chargeback scheme is a voluntary code and it's not a consumer right. And it isn't a guarantee of getting a customer their money back either. This is because merchants can defend chargebacks. However, where there's a reasonable prospect of success we'd expect a bank to attempt a chargeback for a customer.

Santander has told us it declined Mr A's chargeback because it didn't meet the required criteria. As part of the chargeback process Mr A provided a copy of the terms and conditions he'd signed with the merchant. The terms and conditions state that if the vehicle is involved in an accident, Mr A would be charged 50% of the vehicle's market value if at fault and also under section 4 he would be liable for the cost of repairs and loss in value of the vehicle.

Santander said it spoke to the merchant about the accident and they were told the vehicle had been written off and was left un-roadworthy for four months. This resulted in additional charges which the merchant claimed from Mr A under the hire agreement.

Santander said it also spoke to the merchant about the third party's admission of liability. Santander was told Mr A crashed into the back of another vehicle and this demonstrated he wasn't observing the Highway Code because he failed to leave enough space between the cars to allow him to brake safely.

Santander also noted that the third party's admission of liability was signed by the driver – rather than his insurance company and it didn't contain any contact details or insurance details for the driver.

Based on the above information Santander rejected the chargeback. I think it was reasonable for Santander to decline the chargeback without pursuing it further. I say this for a number of reasons.

Firstly chargebacks can only be made in limited circumstances. For example, a cardholder can request a chargeback where they didn't authorise the transaction. But in the circumstances of this complaint Santander's records show Mr A pre-authorised the merchant to debit charges due under the hire agreement. I realise Mr A says he thought he was approving only a payment up to the £1,000 excess but I'm afraid that's a matter between Mr A and the merchant. So I can't say Santander acted unfairly due to Mr A pre-authorising the payment.

Secondly we'd only expect a business to pursue a chargeback if there's a reasonable chance of success. Based on the terms and conditions Mr A signed with the merchant Santander had reason to believe the merchant was properly charging Mr A for damage to the vehicle. I can't say it was unfair for Santander to come to this conclusion based on the information it had available to it at the time.

Even if Santander had submitted the chargeback I think it's more likely than not that it would have been defended by the merchant based on the terms and conditions Mr A signed with the merchant and for the reasons I explained earlier. So I can't say Santander acted unfairly in coming to the conclusion that there was no reasonable chance of success.

That said, I think Santander should have explained the chargeback process better to Mr A and the limited grounds it had available to challenge the payment. I also think it should have explained to Mr A why it rejected his chargeback request. In view of the significant amount Mr A's account was debited I have no doubt this has been stressful for him. To settle matters I think a fair and reasonable outcome is an award of £250 compensation for the poor service he received."

For the reasons above I explained that I was provisionally intending to partly uphold Mr A's complaint and to direct Santander UK Plc to pay £250 compensation to Mr A for the stress and anxiety caused to him due to the poor customer service he received.

I invited both parties to let me have any further submissions before I reached a final decision. Santander confirmed that it agreed with my provisional decision. Mr A's representative also provided initial comments. He said that Santander took the merchant's word for what happened without asking Mr A for clarification about what had happened. And he thinks the merchant took more money from the account than the car was worth. He also said he would provide further comments but hasn't done so.

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.

I've thought carefully about the additional submissions made on Mr A's behalf but I haven't been provided with any new information that causes me to depart from the conclusions I set out in my provisional decision.

my final decision

My final decision is that I uphold this complaint in part and I direct Santander UK Plc to pay to Mr A £250 for the stress and anxiety caused to him due to the poor customer service he received

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 24 April 2020.

Michelle Hayward
ombudsman