

Complaint

Mr and Mrs H complain in summary, that Santander UK Plc did not help them recover all the money they paid to a binary options trading platform using Mr H's Santander VISA debit card.

As Mr H had most of the dealings with Santander, for ease of reading, I'll refer to all submissions as having come from Mr H himself.

Background

After seeing an advertisement for an entity, S Ltd, offering binary options trading Mr H decided to deposit £250 with it using a credit card with one of his banking providers (Bank A). Mr H says he felt persuaded to invest because the advert was endorsed by a well-known celebrity and S Ltd appointed an investment manager to manage his trading account. He says he was pressured by the investment manager into depositing further funds using his Bank A credit card, so he deposited a further £500. After more pressure from the investment manager, Mr H deposited £1,250 using his Santander VISA debit card on 4 September 2018. Ten days later, Mr H saw that his investments had earned profits and had grown to £2,348.74.

A different investment manager got in touch with Mr H and asked him to invest a further £250 and he did so with his Bank A credit card. Shortly after Mr H made the payment, he changed his mind and filled in an online withdrawal form to get this money back. He was told his withdrawal would be processed within five working days. The withdrawal didn't materialise and Mr H's account was subsequently closed down by S Ltd and re-opened under a new username and password.

Mr H saw his balance continue to grow to £3,074.90 and decided to withdraw £3,000 on 8 October 2018. He understood from his terms and conditions with S Ltd that it was entitled to take a fee of £20 for his request. Mr H was asked to 'validate' his account with S Ltd by providing identification and address verification documents. Shortly after Mr H's account was 'validated', his available balance dropped to £133.45. Mr H emailed the investment manager to inform him what had happened and explained he was happy to withdraw his deposits alone, rather than any profits.

Mr H was diagnosed with cancer shortly after his withdrawal request, which he explained to the investment manager. The investment manager told Mr H that his request would be expedited, however, Mr H didn't hear anything further. That led him to approach Santander and Bank A to help recover his money.

Bank A successfully processed chargeback claims for Mr H and recovered the deposits made with Mr H's Bank A credit card.

Santander declined to process a chargeback claim for Mr H because it said his particular dispute was not covered by the dispute resolution process and he had benefited from the service of S Ltd. Mr H referred his complaint to this service.

Our investigator concluded, first of all, that Mr H did have valid chargeback grounds and Santander ought to have done more to gather the evidence it required to process a chargeback claim for Mr H. He further found that S Ltd had operated a 'scam' and he felt there were strong grounds to process a chargeback claim.

Although Mr H accepted the investigator's recommendation, Santander did not. It maintained Mr H's dispute was not covered by the chargeback process. The complaint has, therefore, been referred to me for review and determination.

My Final Decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so, I uphold this complaint for largely the same reasons as that of our investigator.

The chargeback scheme is voluntary, and banks are not under a formal obligation to submit a chargeback claim. However, this service's view is that it is good practice for a bank to process a chargeback claim where rights exist under the scheme rules.

VISA expanded its rules for transactions made after 14 October 2017 to address cases whereby a binary options or investment trading merchant had imposed obstacles preventing cardholders from withdrawing their available funds. The applicable 'reason code' is 13.5 (misrepresentation). This chargeback right is limited to the amount available in the account at the time funds are requested and a card issuer cannot chargeback more than the original value of the transaction.

There is a time limit of 120 days applicable to this chargeback reason code which applies from the date the cardholder expected to receive the services, rather than the date of the transaction, up to 540 days from the date of the original transaction.

In Mr H's case, I'm satisfied he did have a dispute right within the VISA chargeback scheme because S Ltd didn't allow him to withdraw his available balance. However, this reason code required some specific evidence which I've listed here:

- Evidence the cardholder attempted to resolve the dispute with the merchant. If this was unsuccessful, evidence the cardholder cancelled services.
- Evidence that the cardholder's investment account had funds to withdraw. This evidence must be dated to show that funds were available on the day the cardholder requested the withdrawal.
- Evidence the cardholder requested a withdrawal equal to or less than the funds available in the investment account.

In Mr H's case, he provided evidence to Santander that he tried to resolve this matter directly with S Ltd. Mr H also provided evidence that he attempted to withdraw £3,000 from his trading platform. He received a dated acknowledgement from S Ltd (the same day as his withdrawal request) who advised that his withdrawal request of £3,000 would be processed. I'm therefore satisfied the evidence supplied by Mr H to Santander would have been sufficient to support a chargeback claim under reason code 13.5.

Given that reason code 13.5 was introduced specifically for claims relating to binary options trading merchants preventing cardholders from withdrawing their available balances and this was the very nature of Mr H's claim, I think Santander unreasonably declined to process a chargeback claim for him. As Mr H's Bank A claim succeeded against S Ltd, it follows that I think, on balance, a chargeback claim would have also succeeded with Santander, if one had been attempted.

Because of this, I think Santander should return the full amount he paid to S Ltd using his Santander VISA debit card, plus interest.

My Final Decision

For the reasons I have explained, my final decision is that I uphold this complaint. I direct Santander UK PLC to:

- Refund the payment Mr H paid to S Ltd (totalling £1,250).
- Pay interest to Mr H on the above sums, at an annual rate of 8% simple, from the date Mr H reported the fraud, to the date of settlement. If Santander is required to deduct tax from the interest it should send Mr H a tax deduction certificate so he can claim it back from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 July 2021.

Dolores Njemanze
ombudsman