

complaint

Mr D complains Santander UK Plc has refused to attempt a chargeback for deposits he made for binary options.

He is being represented in his complaint by Mr T.

background

Mr D opened a binary account in 2016 with a business which I'll call "G". Between September 2016 and March 2017, Mr D made deposits into his account of nearly £23,000.

Mr D made a refund request to G over several months but a refund hasn't been made. On at least one occasion G informed him that he couldn't receive a refund as his account wasn't liquid and he needed to fund it with over £5,000 more for a refund to be made.

Mr D never received a refund and so he asked Santander to initiate a chargeback for goods not as described. Santander didn't do this as the transactions had occurred outside of the 120 day time limit set by the card scheme, to request a chargeback. Mr D complained as he believed the time limit ran from when he asked for the refund and it was refused. Santander stood by its decision and didn't uphold the complaint.

Mr D asked us to look into the matter. When sending its file Santander said the card scheme treated binary options as a form of gambling and no chargeback rights existed for that. It also said Mr D hadn't provided the full terms and conditions for review and although the claim was originally declined due to the time limit, no actual chargeback right existed.

One of our investigators looked into the complaint. But she didn't think Santander had done anything wrong. She referred to Santander's experience that a right doesn't exist for binary options. She also concluded the scheme required an element of purchase; Mr D hadn't made a purchase for goods or services, but made a deposit of funds. She also found that binary option chargebacks had been specifically excluded from the scheme rules from October 2017.

Mr T disputed that and asked for an ombudsman's decision. In summary he's said:

- The bank initially declined the chargeback request by incorrectly relying on the time limit. It repeatedly said this.
- The card scheme has specifically said transactions of this nature can be disputed (withdrawals not allowed from binary option balances).
- The bank told Mr D that it was waiting a reply from the merchant. Santander didn't say the merchant had denied the dispute, it simply said the case was closed. Chargebacks that aren't disputed in 45 days should be refunded.
- Chargebacks are based on the card issuer's scheme and not a bank's experience.
- The rule change in October 2017 was designed to make it easier to raise chargebacks against merchants of this nature.
- The bank has provided contradictory information.

Since the matter was referred to me I asked Santander why it had told Mr D it was waiting for a reply from the merchant. Santander told me it didn't have evidence of this conversation and doesn't know who the person responding to Mr D's query spoke to, but confirmed a chargeback was never raised.

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 done so, I'm not upholding this complaint.

There is no dispute that Mr D took out an account with G and authorised the payments for binary options. I'm given to understand he was successful with some of the options and received bonuses into his account, although I haven't seen any documentation of that.

At the heart of this dispute is Mr D's request for refund of the funds he deposited into the account. As the refund wasn't given Mr D asked Santander to initiate a chargeback. Chargeback rights are given by the card scheme, usually VISA, Mastercard or AMEX. They are not a legal or contractual right, and so there is no legal or contractual obligation on a card issuer, in this case Santander, to initiate a chargeback. But we would generally consider it good practice for a bank to do so. However, we wouldn't expect this to be done where a chargeback has no or little prospect of success, or doesn't meet the criteria.

Mr T has made much of Santander's initial refusal to initiate a chargeback based on the time limits and it informing Mr D that it was waiting for a reply from the merchant. As can be seen above, no chargeback was actually raised. And once a matter has been referred here, it's for us to decide whether or not the bank has acted fairly and reasonably, and we might find it had done so for different reasons than were originally given.

Having looked at the applicable card scheme rules, I can see that generally in order for a chargeback to apply there needs to be an element of a purchase for goods or services. Mr D wasn't buying goods or services; he was depositing funds into an account that were to be used for binary options. So I don't think he met the criteria in that regard.

There appears to have been a right in relation to financial goods or services. But I'm not persuaded that applies either. Santander has told us the applicable card scheme considered binary options were a form of gambling and there were no chargeback rights for gambling. I'm not persuaded that financial goods or services includes gambling. And in my experience, this is how a number of card schemes, including this one, treat binary options – likely because the deposited funds are used to 'bet' on the outcome of market movement of a particular stock.

Mr T believes the applicable scheme rules contain an express right for a chargeback where a withdrawal of balances from a service hasn't been given. I understand this is from rules introduced effective from October 2017. I'm not sure this is an express right, as this is listed in the rights and limitations section of the rules, so could equally be a limitation. And if it was a right that would be contrary to what other card schemes are doing (other schemes have and are introducing rules that mean there is no right for this type of transaction), which would be unusual. I do, however, accept that could be what this card scheme intended. But this doesn't make a difference to Mr D's complaint as this was introduced after both his request and Santander's refusal to initiate a chargeback, so the rule doesn't apply here.

In my experience of complaints about binary options, few chargebacks succeed, usually because the business can point to terms and conditions that allow it to place restrictions on when and how funds can be withdrawn from these accounts. It's not my role here to decide whether those terms are fair but to decide whether Santander has acted fairly. I'm not

persuaded it was unfair or unreasonable for Santander to rely on its own experience of the success or otherwise of chargebacks for binary options, when declining to initiate Mr D's chargeback request.

I understand how frustrating this is particularly as Santander initially relied on time limits and gave Mr D incorrect information about waiting for a merchant reply. But I don't think either of those things meant it should've attempted a chargeback or that an award of compensation should be made.

my final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 March 2018.

Claire Hopkins
ombudsman