

complaint

Mr A complains Santander UK Plc are holding him liable for transactions he didn't authorise. He also says Santander allowed direct debits to go through when there weren't enough funds in his account, and he incurred charges. And he's unhappy he was charged overdraft fees even though he didn't agree to this when he opened the account. He also complains Santander have closed his account giving 30 days' notice.

background

In 2017 Mr A noticed multiple transactions to a number of different betting sites and to a company, I'll call A, which he says he hadn't authorised. Mr A says he authorised some of the transactions to the merchants, but he's not been able to specify exactly which ones.

Mr A also said he never set up a direct debit for his insurance company and payments for his insurance were released when he didn't have funds, so he incurred charges unnecessarily. He also queried direct debits to a telephone provider.

Mr A says he shouldn't have been charged overdraft fees with his account as he believes his account didn't charge for overdraft facilities. He also said he was given 30 days' notice in September 2017 that the bank was to close his account.

Account closure

Mr A complained to Santander. In looking at the disputed transactions the bank said it could only look at transactions 13 months prior to them being raised as per their terms and conditions. And they found no evidence of fraud.

When considering the other complaint points, they said the account had always charged for overdraft facilities. And the direct debits for Mr A's insurance had been reversed on numerous occasions due to insufficient funds. The merchant would then re-present the direct debit for collection and if there were enough funds in the account the direct debit would go through.

Santander said they'd closed Mr A's account in line with its terms and conditions and gave him 30 days' notice.

Mr A complained to our service. One of our investigator's looked into Mr A's complaint and said in summary he didn't think Santander needed to do anything more. He thought Santander hadn't made a mistake by not refunding the disputed transactions. He also said the bank was entitled to close a customer's account when giving 30 days' notice

A second investigator looked at Mr A's complaint. In summary he reached the same conclusions to the first investigator – That it was fair for Santander not to consider the disputed transactions raised outside of 13 months and he thought the other transactions were authorised.

In response to the view Mr A said

- he hadn't authorised the account to change to one that charged overdraft fees.
- He said he didn't look at his transactions until 2017
- he set up online banking in 2015/16.

Mr A was not happy with the investigator's view, so the matter has come to me for decision.

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, my review of the evidence has led me to the same overall conclusions as the investigator previously set out in the second view and for much the same reasons.

Overdraft charges

We can't usually consider a complaint which is referred to us – or the business – more than six years after the event that's been complained about. Or three years from when the complainant became aware – or should have been aware – they had cause for complaint. Mr A's account was opened in May 2009 – so six years from this would be May 2015. Mr A contacted us in October 2017 to raise this complaint, so out of the six-year timeframe.

But I also need to consider when Mr A became aware, or should have been aware, of the need to complain.

I can see that statements were issued to Mr A. Mr A has said he didn't receive statements so wasn't aware of the overdraft charges. But even if I accept Mr A didn't get the statements, I've seen evidence Mr A accessed his online banking from 2013. So, I'd have expected him to have identified the need to complain much sooner than he did.

Because I'm satisfied Mr A was receiving bank statements and was using online banking from 2013, I think Mr A could've queried with the bank if he thought the account was wrongly being charged fees for overdraft. I think Mr A knew or ought to have known about the changes to the account. Since he didn't raise the complaint within three years of when he reasonably ought to have been aware of the charges, I'm unable to consider this part of the complaint.

Disputed transactions between 2002 and July 2016

Mr A has queried betting transactions going back to 2002 – Under the Payment Service Directive the consumer is entitled to redress only if they notify the bank without undue delay - and no later than 13 months after becoming aware of any unauthorised transactions.

This is reflected in the terms and conditions of Santander which says:

13.1

You are responsible for transactions from your account and any fees or interest incurred as a result of those transactions if:

g) you failed to tell us the transaction was unauthorised, incorrect or not carried out by us within 13 months of the date on which the transaction occurred or ought to have occurred.

This means that unless transactions have been queried within 13 months then the bank will not consider the disputed transactions. Santander said they'd only consider the disputed transactions between August 2016 and September 2017. I agree that as Mr A raised the

complaint about the disputed transactions in September 2017, the terms and conditions of his account say Santander can only consider transactions from August 2016.

I've considered if it's fair and reasonable for Santander to rely on these terms to refuse to look at Mr A's older disputed transactions. I've seen evidence Santander sent statements to Mr A from when the account was set up and Mr A registered for online banking in 2013. Mr A has said he didn't get the statements so couldn't alert the bank. I've seen evidence which shows he used online banking since 2013 so could have spotted the disputed transactions even if he hadn't received the statements the bank sent him over the years.

I understand Mr A says he wasn't aware of the disputed transactions until September 2017, but I'm satisfied it's not unreasonable for Mr A to have checked his statements or online banking before this. So, he ought to have been aware of the need to complain to the bank soon after the transactions occurred.

So, I think Santander have acted fairly and reasonably in relying on their terms and conditions to not refund the transactions.

Disputed transaction between 15 August 2016 to 15 September 2017

In respect of the transactions Mr A disputes, which occurred between 15 August 2016 and 15 September 2017, I need to consider if Santander acted fairly when it declined to refund these transactions. The transactions have been set out in the investigator's view. Mr A is disputing a large number of gambling transactions – to a number of different online sites – as well as some online payments to A

In general Santander can hold Mr A liable for the disputed transactions if these were made or authorised by him. The relevant regulations are the Payment Service Regulations 2009 (PSR's 2009). I am satisfied the bank's technical evidence shows the transactions were authenticated by the card details being entered. But, this isn't enough to allow Santander to hold Mr A liable for the transactions he disputes. I need to consider whether it's more likely than not Mr A consented to the transactions.

From the evidence I have seen I think it's reasonable for Santander to conclude Mr A carried out the transactions. I say this because:

- one card was in use during the 13 month period of the disputed transactions between August 2016 and September 2017. Mr A lives on his own and I've not seen any evidence or a convincing explanation for how anyone else could have taken and replaced Mr A's card without him realising.
- Mr A said he used the gambling websites for some transactions. And Mr A's bank account was credited with some winnings from the gambling websites none of which were transferred out of his account. I can't see how a fraudster would've got any benefit from the winnings and so I think it's more likely than not those transactions were being made by Mr A.
- The information held by the gambling websites matches the information Santander holds for Mr A. This includes his email address, date of birth, addresses Mr A has lived at and card details. I find it surprising that Mr A wouldn't have been notified – by the sites – when the deposits and withdrawals he says he didn't authorise took place.

- Mr H has queried the transactions to A but not the setting up of A's account. He hasn't been clear about which transactions he disputes but has not provided any evidence as to how his account was accessed by a fraudster. The transactions to A were all carried out by debit card and the correct CVV was entered when requested with no failed attempts.

I also think if a third party had access to Mr A's online banking fraudulently, that fraudster would have likely emptied the account of funds and that didn't happen. So, I think it's more likely than not that Mr A did authorise the transactions.

In response to our investigator's opinion on the disputed transactions Mr A said he didn't look at his transactions until 2017 and he set online banking up in 2015/16. He said someone else was using his online banking. Mr A has not provided any evidence to support this. On the contrary the evidence I have seen suggests Mr A had access to online banking from 2013.

Taking everything into account I find on balance Mr A authorised the disputed transactions. It follows Santander is entitled to hold him liable for them.

Direct Debits to the insurer and a phone provider

Mr A has said he never set up the direct debits to the insurance company. And he was also concerned Santander was releasing payments at times when he had no funds thus incurring charges for Mr A. Our investigator explained decisions about payment releases are automated and so Santander wouldn't have a say in when the payments were sent to the insurance company. Case law allows Santander to enable payments to go to the insurance company even if this would put Mr A's account into unauthorised overdraft.

I am satisfied Mr A did set up the direct debits to the insurance company. I say this because I have seen the audit reports provided by Santander and as I have explained Santander could not influence the timing of these payments. Santander have acted in accordance with the terms and conditions of the account in allowing automated payments to go through when there are sufficient funds on the account, or the payment doesn't exceed the limit Santander may have for an unauthorised overdraft.

Mr A has also queried direct debits to a phone provider saying he did not set this up. I can see there is a creation request for a direct debit in March 2019. The correct payer and account details have been provided. This direct debit was cancelled in September 2019 following the last payment to the merchant. So, I am satisfied Mr A set up the direct debit to the phone provider.

I don't think, when looking at the evidence, Santander have done anything wrong regarding the direct debits to the insurer or the phone provider.

Account closure

A bank is entitled to close an account with a customer just like a customer may close an account with a bank. But before it can close an account a bank must do so in a way which complies with the terms and conditions of the account.

I've seen evidence that Mr A was sent a letter on 26 September 2017 giving him 30 days' notice of the closure of his account.

As Santander gave notice of the account closure, I have looked at the terms and conditions it relied on. Having looked at the terms and conditions of Mr A's account I can see Santander can close an account with less than 60 days' notice in certain circumstances. And I'm satisfied they complied with these terms.

Although Mr A would like to know the reasons for the closure of his account Santander is not obliged to give him the reasons. I have checked whether Santander have complied with its own terms and conditions when closing Mr A's account. I can confirm Santander has done so and I will not be asking it to do anything more.

I appreciate that the closure of Mr A's account caused him inconvenience. But the bank can make commercial decisions about who it offers banking services to. They can't unfairly discriminate against a customer. But, they can decide they no longer want to do business with individuals. That's because they have the commercial freedom to decide who they'd like to contract with. And I'm satisfied that in Mr A's case Santander exercised its commercial freedom legitimately when it decided to close his account. So, I can't fairly and reasonably say Santander have done anything wrong here.

In summary I realise this will be disappointing to Mr A, but I don't think Santander have done anything wrong here. If follows I won't be asking them to do anymore.

my final decision

For the reasons given above I do not uphold the complaint against Santander UK Plc.

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

Esperanza Fuentes
ombudsman