

The complaint

Mr B complains about how Santander UK Plc handled chargeback requests he made.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mr B made a request to Santander to claim back several gambling transactions he had made using his debit card.

Santander was successful in getting Mr B some refunds. However, Mr B says there are more refunds Santander owes him for which it hasn't paid out.

Mr B made a complaint to this service about the way Santander handled his chargeback disputes. But our investigator did not uphold the complaint.

Mr B has asked for an ombudsman to look at things to make a final decision.

I issued a provisional decision on this matter as follows:

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

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While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

Furthermore, where matters are unclear or in dispute I make my decision based on what I think is most likely to be the case.

Clarifying the extent of this complaint

There are several casino transactions which Mr B asked Santander to dispute for him. And it appears Santander has issued several 'Final Response' letters to Mr B in respect of these (and there are a lot of dispute references). It can get quite confusing so I thought it would be useful to explain what I am making my decision on here.

The complaint that Mr B wants this service to look into appears to be focused on his claim to Santander in respect of transactions relating to two casinos which I will refer to as 'A' and 'T'. In my cover letter I will explain to the parties exactly what these casinos are.

The relevant transactions made to A+T in 2023 appear to be as follows:

Casino 'A' (12 transactions which Santander put under the ref ending '7374')

Date	Amount
06/09/2023	£15
06/09/2023	£15
06/09/2023	£15
06/09/2023	£15
06/09/2023	£13
06/09/2023	£17
06/09/2023	£10
07/09/2023	£12
07/09/2023	£10
07/09/2023	£13
08/09/2023	£11
08/09/2023	£11

Casino 'T' (First 12 transactions Santander put under ref ending '7406', last 4 under ref ending '7488')

Date	Amount
23/09/2023	£10
28/09/2023	£10
28/09/2023	£700
28/09/2023	£10
28/09/2023	£12
28/09/2023	£29
28/09/2023	£26
28/09/2023	£10
30/09/2023	£10
30/09/2023	£25
30/09/2023	£20
30/09/2023	£15
30/09/2023	£15
30/09/2023	£12
01/10/2023	£30
01/10/2023	£28

Santander used other reference numbers while handling Mr B's casino disputes but it isn't immediately clear to me what some relate to. For example, Mr B has said Santander's ref ending '7496' also relates to casino T. I don't see what transaction it relates to specifically but I also don't consider this crucial to my findings at this stage.

I can see Santander responded to Mr B's complaint about casino disputes in its 'Final Response' letter dated 17 January 2024. This letter mentions that certain chargebacks (not against A+T) succeeded (and resulted in Mr B getting around £500) but others didn't. In referring to those that didn't succeed it mentions T (and I presume it is also referring to casino A). The letter goes on to explain why these chargebacks did not succeed – and why Santander does not consider it is at fault for that.

It seems Mr B contacts Santander again to say he is still not happy all the chargebacks were not credited to him based on what he has found out. This appears to be because of a live web chat he had with Santander where he was led to believe certain disputes were still outstanding and/or due for payment. Santander then follow up this complaint with another 'Final Response' letter dated 13 February 2024. Said letter confirms that all of the disputes are now closed.

Overall, I am satisfied the relevant 'Final Response' letters here are those dated 17 January 2024 and 13 February 2024. And that these relate to the complaint Mr B has brought to this service which centres on the claims made in respect of the transactions with A+T which I have referred to above. When deciding if Santander has acted fairly I will be focused on Mr B's claim in respect of these transactions to A+T.

It is important to note that I am not looking at what Mr B has said about Santander closing his account as it doesn't form part of this complaint.

Do Santander fairly owe Mr B refunds in respect of transactions he made to A+T?

When Mr B approached Santander to make claims for refunds of debit card spending with casino's including A+T Santander considered the chargeback scheme. This was not unreasonable in the circumstances. Because Mr B made the transactions by debit card Section 75 of the Consumer Credit Act 1974 would not be available. Furthermore, Santander clarified that although Mr B had a gambling block on his bank account, transactions went through where casinos did not use the merchant transaction code for gambling (and that this was usually the case with overseas merchants). I accept this is likely – and there is no persuasive indication that Santander should have blocked the gambling transactions in the first instance.

The chargeback scheme is not a legal right nor is it guaranteed to succeed. However, it will often be good practice to attempt one where there is a reasonable prospect of success.

I understand the transactions which Mr B asked Santander to claim back on his behalf all relate to casino deposits which Mr B does not dispute using to make online bets. The basis of Mr B's claim is not that money was not deposited in his gambling accounts with A+T, or that he wasn't able to use the funds to make bets. Mr B's claim for a refund is based on the fact that he had 'self-excluded' himself from betting with the casinos, but they still allowed him to bet using his Santander debit card.

The details of Mr B's 'self-exclusion' with A+T are not clear. However, I am sorry to hear about what Mr B says about these casino's not doing what he expected them to. When considering the fairness of Santander not refunding Mr B for the transactions he made to A+T my starting point is what the relevant chargeback scheme rules say.

In this case the chargeback scheme is Mastercard. And Santander has said it does not provide Mr B with a right to a refund in these circumstances. To support its position it has quoted from the chargeback rules to support this:

Gambling and Investment Chargebacks.

Chargebacks are available to the issuer for transactions in which value or assets are purchased for gambling, investment or similar purposes and they are not provided according to the contractual terms and conditions agreed to between the cardholder and the merchant. Additionally, chargebacks are available when the value or assets are made inaccessible for use in violation of the contractual terms and conditions.

This may include, but is not limited to, when the value or assets are unable to be withdrawn by the cardholder or are transferred to an account outside the cardholder's control without the cardholder's authorization.

An issuer has no chargeback rights related to the use or authorized transfer of such value or assets, or on any winnings, gains or losses resulting from the use of such value or assets. An example includes, but is not limited to, when the value or assets are subsequently exchanged or otherwise utilized in a separate, non-Mastercard transaction.

From this and my own perusal of the rules I am persuaded the scheme does not provide a chargeback right for funds which have been deposited and then used to stake bets. And it does not make an exception for those who have requested to be self-excluded. I don't know exactly what edition of the chargeback rules Santander has quoted from – but the copy of the 2023 Mastercard chargeback guide I have looked at says the same thing. So it appears likely that this was the position at the time Santander looked into disputing the transactions in question.

I know Mr B has said his situation does come within the chargeback rules because the transactions were 'fraudulent' and 'unauthorised' - but I am not persuaded this is the case. There is no compelling evidence Mr B didn't make the transactions himself or know what they were for. The issue Mr B describes is not that the sites were not legitimate gambling sites – more that they did not respect his self-exclusion. There is also no persuasive evidence this means there was fraudulent activity by A+T here.

So, if the chargeback rules don't cater for such a situation, a valid question is why did Santander raise chargebacks for Mr B's gambling transactions?

From what I can tell, Santander raised the chargebacks as an exception for Mr B due to his challenging financial circumstances on the off chance they might not get defended. From its response to his complaint I am left with the impression the only reason some of the chargebacks succeeded is because they went unchallenged by particular casinos. However, from what Santander has said the chargebacks in question were defended by A+T on the basis that Mr B had use of the funds he deposited for bets. As a result Santander discontinued its chargeback attempts.

Santander has provided copies of what it says are merchant defences for A. These defences from A specifically state that Mr B has staked the funds. The situation with T is less clear but on balance it appears Santander did raise a chargeback for these transactions. Santander says it did and Mr B has also provided screenshots of chargebacks against T 'in progress' on his online banking. Furthermore, Santander has provided what it says is the merchant defence from T – which admittedly lacks commentary from T (it appears to be a simple list of bets staked) but also supports Santander's claim that T defended the chargebacks against it.

On the face of it, Santander discontinuing the chargebacks against A+T is not unfair. Essentially, Mr B did not have a legitimate chargeback reason under the rules and these were then defended. And although Santander exceptionally tried to help Mr B – ultimately it isn't fair to say it should have pushed the chargebacks further here as they had a low chance of success.

Mr B has maintained that Santander do owe him the money for these chargebacks because it confirmed to him via a live webchat on 18 January 2024 that:

- 1. The chargebacks in respect of A (under ref 7374) were declined because they were raised under an incorrect chargeback category; and*
- 2. the chargebacks in respect of T (under refs 7406, 7488) were open and/or credited to his account (but he didn't get this credit).*

The key thing to note is that I think Santander made an error in the way it communicated with Mr B. I cover this later in my decision. However, the basis for my award is not that points 1 & 2 (above) are likely correct – in fact I think they are likely to be incorrect statements by Santander's agent. I will explain using the numbering above for clarity:

- 1. I don't know why Santander indicated to Mr B it had raised chargebacks against A under an 'incorrect' category. Ultimately, I don't think it would have made any difference what chargeback category Santander used here – as there isn't a 'correct' category which fits this situation (as I have explained above). So, as long as the merchant defends the chargeback (which I am persuaded 'A' did here) it was not going to succeed in any event.*
- 2. Despite what Mr B was told by Santander's agent I don't consider it likely that the chargebacks in respect of T had been successful and were due to be credited to Mr B's account. I say this because Santander has since confirmed to this service that T defended the chargebacks and provided a document which it says was T's response. I acknowledge that Mr B might doubt this is the case based on what Santander told him on the webchat. I also note the document that Santander provided is not very detailed as to the specific commentary provided by T. However, accepting that there is some degree of ambiguity here I have to decide what is most likely. And because Mr B doesn't have relevant chargeback rights in this situation I think that it is more likely than not that T defended the chargebacks on the basis that Mr B had utilised the funds. And as I have already said above – it isn't unfair for Santander not to have taken things further on that basis.*

For completeness I note Mr B has mentioned Santander reference ending in '7496' which he says relates to transactions with T. I don't presently see where this reference relates to a separate transaction with T than those I have covered – however, even if it does this won't change my outcome here. Even if it were true that another dispute with T had been open at the time Mr B had the webchat with Santander, it appears to have now confirmed this was closed without success. And based on my reasoning here I consider that would be the most likely outcome.

For clarity, I am aware Mr B has specifically referred to his belief that the disputes were open and in progress after 45 days and how it means he will win the money back by default. However, even if he was given the impression that these were undefended (by Santander's online system or otherwise) I am satisfied from the evidence I have that the chargebacks against A+T were likely defended – so I don't think refunds are due.

It is worth noting that even if I were to accept that it was very unclear if A+T had defended the chargebacks (and I don't accept this), it still wouldn't necessarily mean I would say Santander should fairly now award Mr B refunds for those chargebacks. I say this noting that Mr B does not technically have a chargeback right under the relevant rules.

In summary, despite what Santander told Mr B previously, I don't consider he is owed money from it in respect of the chargebacks against A+T. Nor, am I persuaded it made errors with chargebacks that would mean it should fairly reimburse him for these in any event.

Customer service

I can see Santander wanted to assist Mr B even when the chargeback scheme was not a good fit. However, even if Santander is going over and above what it might normally do, it should provide Mr B with a sufficient standard of customer support, including clear and accurate communication. In my view, at the heart of this complaint is a failing by Santander in that respect.

Firstly, I don't see where at an early stage Santander explained its plans and managed Mr B's expectations in respect of the chargebacks it was attempting. Noting all the things it told him at the end of the process about the rationale for attempting these (and the limitations of the chargeback scheme) I don't see how this was clearly explained to Mr B at the outset. I think it would have helped with mitigating his frustration as to why Santander were not doing more in respect of the chargebacks against A+T.

Secondly, I consider that Santander gave Mr B incorrect information in the live web chat on 18 January 2024 about his chargebacks. This has clearly compounded the confusion and resulted in significant frustration for Mr B. It has sown understandable doubt in his mind about whether Santander are now giving him factually correct information about chargebacks which it says were defended by A+T. The information Santander gave Mr B on the chat has also misleadingly given him the impression that it caused him a loss by not raising chargebacks properly. Santander had a chance to set the record straight about all this in its follow up response in February 2024 (and apologise) but it didn't do this.

There are also many transactions and references to keep track of for the chargebacks Santander took forward for Mr B and things naturally can get confusing. Santander appears to have known about Mr B's vulnerabilities already. With this in mind, I think that Santander could have given Mr B more support when it decided to break from its usual position and proceed with the chargebacks. I don't see where it gave him clear information about what transactions it was charging back, the relevant references and how he could access tailored updates to how things were progressing. I also don't see where Santander pro-actively provided him any copies of relevant merchant defences from A+T with an explanation of why things were not being taken forward. I think this would have been reasonable in the particular circumstances here.

Although I recognise Santander's intention to help Mr B, I consider its lack of clear communication from the outset, along with what I consider to be the provision of factually incorrect information (and a failure to recognise and clarify this in a timely way) has clearly had a significant impact on him. Mr B has shown how frustrated he is with the situation both in communication to this service and to Santander – he has said he feels he is being 'humiliated' by what has gone on. I get the impression he doesn't feel heard by Santander – regarding the inconsistencies in what it told him about the progress of his chargebacks. The situation is compounded by what Mr B has shared about his mental health struggles and overall vulnerability.

I am sorry to hear about the impact of all this on Mr B. In deciding fair compensation for this case I note Santander's customer service failings have caused him considerable distress, upset and worry which has gone on over an extended period of time. But I also have to balance this against the fact that Santander's actions in doing more than would usually be expected under the chargeback scheme have recovered him almost £500 he had already used on bets.

I have considered our guidance on awards for distress and inconvenience as found on our website. And overall, (noting this is not a science) I think a distress and inconvenience award of £350 would fairly reflect what has occurred here and compensate Mr B sufficiently.

I hope my decision can bring about closure for the parties on this matter. However, if Mr B does not wish to accept my decision he can reject it and might be able to pursue the matter against Santander by other means (such as court) if he wishes.

Both parties accepted my decision.

What I've decided – and why

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

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision.

Putting things right

Santander should put things right as I have set out below.

My final decision

I uphold this complaint and direct Santander UK Plc to pay Mr B £350 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 January 2025.

Mark Lancod
Ombudsman