

The complaint

Mr S says Santander UK PLC (“Santander”) failed to refund him for several transactions on his account which he says he wasn’t responsible for.

What happened

Mr S says he was abroad on holiday when he believes his drink was spiked while on a night out. He says several transactions were made on his account which he didn’t authorise, and he thinks these were done after he was spiked.

Santander say the transactions were all carried out using the same device used by the Mr S previously for genuine banking activity and also the transactions were authenticated via in-app authentication. And as Mr S says he still has his phone and card; they believe he must have authorised these transactions.

Our investigator considered all the evidence in this case and decided not to uphold it. Mr S wasn’t happy with this outcome, so the complaint has been passed to me for a 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.

When considering what’s fair and reasonable, I’m required to take into account relevant law and regulations; the regulator’s rules, guidance and standards; the codes of practice; and, where relevant, what I consider good industry practice at the relevant time.

Where there’s a dispute about what happened, and the evidence is incomplete or contradictory, I must make my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Santander can hold Mr S liable for the disputed payments if the evidence suggests that it’s more likely than not that he made or authorised them.

Santander have provided evidence that the transactions in dispute were made via Mr S’ device to his travel card account with another provider and via google pay to a third-party company. They’ve supplied evidence that the transactions were authorised in the Santander mobile banking app which was accessed using biometrics – usually fingerprint or face ID. And it’s likely Mr S’s phone would’ve also been secured by passcode or biometrics. It’s unlikely anyone else would’ve been able to pass the biometric security, so it follows then that it’s more likely than not that Mr S had his device on his person at the time and also made these transactions himself. The transactions complained of are not typical of fraudulent behaviour. Usually once a fraudster gains access to someone’s account they will empty the account as quickly as possible. But Mr S’ account wasn’t emptied and there is no explanation as to why. So, this evidence adds more weight on the likelihood that these

transactions were completed by Mr S.

I have considered what Mr S has said about being on a night out and having his drink spiked before these transactions were made. Mr S has provided some links to support his claim that the third-party that the card payments were made to have fraudulently taken payments from other tourists in the same manner. However, I am not persuaded by this evidence. I appreciate that Mr S was on holiday at the time, but I would've expected Mr S to have reported this incident to the police or visited a hospital when he realised he had been spiked. And unfortunately, without any more persuasive evidence to support what Mr S has said I won't be upholding this complaint.

I know this outcome will come as a disappointment to Mr S, but overall, I think it's more likely than not that Mr S made or authorised these transactions.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 February 2024.

Sienna Mahboobani
Ombudsman