

The complaint

Mr M complains that Santander UK Plc failed to refund transactions taken from his account after his phone was stolen.

What happened

Mr M explained that he was using his unlocked phone outside a pub in the early hours of the morning when it was stolen from him, and the thief ran off. Mr M says he called Santander shortly after this to report the loss of his phone.

Later that day, Mr M received a message from Santander to say that an attempt had been made to increase the limits on his account. Mr M called them and learnt that approximately £5,000 had been taken from his accounts and sent to another account he held with another financial firm (I'll refer to them as R).

Mr M was told that a number of payments had failed and someone else had called Santander that morning to confirm a payment. Mr M told Santander that this wasn't him. Mr M later found that his funds had been sent from his account he held with R to another account in his name held with a crypto currency firm. He wasn't able to recover these funds. It was also found that a payment using Mr M's credit card (from his stolen phone) was also made but this was later refunded.

Mr M asked Santander to refund the losses from his account. Santander considered the circumstances but didn't think it was their responsibility to make any refunds (apart from the payment made from his credit card) because those funds were sent to one of his own accounts. Santander explained that it was R's responsibility to make any refunds.

Mr M made a complaint to Santander believing they should refund him, but they didn't change their position. Unhappy with their response, Mr M brought his complaint to the Financial Ombudsman Service for an independent review. His complaint was assigned to an investigator who looked into what had happened.

Mr M wanted Santander to refund him as the financial loss had been considerable and he was negatively impacted mentally by the incident and Santander's attitude towards him. Mr M noted that Santander accepted he was a victim of fraud but passed the responsibility on to R to make a refund. Mr M confirmed he hadn't recorded any of his banking information on his phone and didn't know how anyone else had managed to gain access to his account.

Santander continued to argue that R should be responsible because the transactions disputed by Mr M were sent to his own account (with R). In a response to our service, Santander said:

"...we acknowledge that this is fraud and the claim hasn't been declined, it's just been treated as a no loss decision as this doesn't alter the fact that the account in receipt of the money belongs to the customer. The financial loss (if any) would sit with R at the point of when its moved from the customers own holdings."

After reviewing the available evidence, the investigator said there was no evidence to show Mr M had authorised the payments himself. There was also no evidence that Mr M was grossly negligent (related to how he secured his banking information/device) and that meant he was due a refund (including a payment for interest) under the regulations. It was also recommended that Santander pay £100 to him for the distress and inconvenience caused to him.

Mr M accepted the investigator's outcome, but Santander did not. They continued to argue that there had been "no loss" to Santander and the refund was the responsibility of R (or the crypto firm involved later in the payment chain).

Santander believed that sending funds to another account owned by Mr M was unusual and they thought that R should be equally liable. Santander asked for an Ombudsman to review the case, which has now 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.

The relevant regulations here are the Payment Service Regulations 2017 (PSRs) which set out what happens if the account holder denies giving consent (his authorisation) to the payments.

Because there's an acceptance by Santander that Mr M wasn't responsible, the transactions are considered unauthorised.

It's Santander's contention that because the payments were transferred to his own accounts, they're not responsible for refunding Mr M because the transaction(s) are "no loss".

What the regulations say regarding unauthorised transactions

Regulation 76 of the PSRs says:

Payment service provider's liability for unauthorised payment transactions

76.—(1) Subject to regulations 74 and 75, where an executed payment transaction was not authorised in accordance with regulation 67 (consent and withdrawal of consent), the payment service provider must—

- (a) refund the amount of the unauthorised payment transaction to the payer; and
- (b) where applicable, restore the debited payment account to the state it would have been in had the unauthorised payment transaction not taken place.

Regulation 74 refers to the notification of the disputed transaction and sets out the time frame for notifying Santander of the issue. Mr M satisfied this regulation when he notified them soon after the loss of his phone.

The relevant part of Regulation 75 refers here to whether Mr M could be held grossly negligent in relation to how he used his phone or if he was suspected of being fraudulently involved in the claim. Santander themselves haven't argued these points and I've seen nothing that would lead me to think they were relevant. So, for the purposes of R 76 – neither R 74 nor R 75 impact on the need to make a refund.

I've thought about Santander's position here – that they believe the refund should be made by another bank because it's effectively a "no loss" claim. My understanding of this position is that because Mr M's funds were sent to one of his own accounts at another bank (before being sent to another of his own accounts), the loss didn't occur until later in the payment chain with another bank.

But, the PSRs make no provision for passing on responsibility in these circumstances. Either the transactions were authorised, or they were not. Because it's accepted they weren't (and nothing else interferes with the obligation to refund) then Santander are responsible for putting Mr M back in the position he was in prior to the loss of his funds.

I do appreciate the added difficulty faced by Santander in trying to determine if the payment to another account in their customer's name is legitimate or not – but that doesn't change the fact that Mr M wasn't responsible for authorising these payments.

Put simply – two transactions were made without Mr M's consent from his Santander account. Santander's decision to refuse to make a refund was unreasonable in the circumstances and the responsibility lies with them to make a refund because they weren't authorised.

Putting things right

Santander should now refund Mr S the full loss he incurred (£4,990), including additional interest at 8% simple for the loss of use of those funds from the date of the initial transactions to the date of refund.

Also, to include a payment of £100 to recognise the impact this had on him through Santander's decision to deny a refund, even though they'd recognised Mr M was a victim. Mr M described the negative impact on his wellbeing and how he had to alter his life plans as a result of the loss, further exacerbated by Santander's decision to deny him a refund.

My final decision

My final decision is that I uphold this complaint against Santander UK Plc and in order to settle this complaint, they're instructed to follow the redress as outlined above.

If Santander considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 August 2024.

David Perry
Ombudsman