

The complaint

Mr A complains Santander UK Plc refused to refund him for transactions on his account he says he didn't authorise.

What happened

The facts of this case are well known to both parties, so I won't repeat them in detail here.

In summary, Mr A says his phone was stolen and was used to make unauthorised transactions on his account.

Santander refunded some of the disputed transactions but refused to refund one transaction of £1,400 made from his Santander account to account in his name with another bank. Santander's evidence is that the transaction was carried out using Mr A's actual device, so it wasn't convinced the transaction was unrecognised. Also, the transaction was made to another account in his name, so, it should not be liable to refund the money as there was no loss.

Our investigator considered the complaint and decided not to uphold it. Mr A disagreed so the complaint was passed to me for a final decision. I completed a provisional decision on 9 April 2023 setting out why I think the complaint should be upheld in Mr A's favour. In my provisional decision I said:

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

As I've said above, I'm minded uphold the complaint, and I'll explain why.

Generally speaking, Santander is required to refund any unauthorised payments made from Mr A's account. Those rules are set out in the Payment Service Regulations 2017. Mr A has said he didn't carry out the transaction in dispute. So, if I think it's likely this transaction was unauthorised, Santander will need refund the money to him.

Mr A has been consistent in his evidence about the theft of his phone. He says his phone was stolen while waiting for a taxi and it was unlocked at the time. Mr A has provided extensive testimony about these events and supporting evidence. Evidence provided includes of a police report, fraud investigations with other banks and evidence that the 'find my phone' feature was turned off soon after the device was taken. I've also seen evidence that money was moved around across Mr A's personal and business accounts in quick succession – which is usual in cases where a fraudster is using different tactics to try and access someone else's funds.

However, Mr A says his phone was protected by face ID and a passcode. Mr A says he was in a bar before he left to take his taxi and he used ApplePay on his phone to make several payments at the bar. For this, Mr A says he would've had to enter his phone passcode and he thinks he might have been shoulder surfed at this point. I've seen evidence that shows Mr A did make several ApplePay payments that night and I think it's possible his passcode was

compromised in this way before his phone was taken. This would've allowed someone else to access Mr A's phone security and change the biometrics to their own face ID or fingerprint.

Mr A has provided evidence that some of his security information was automatically stored on his phone as a feature of the device. So had Mr A been shoulder surfed prior to his phone being taken and his biometrics changed, the fraudster would've had access to his apps via the stored passwords feature on his phone.

Santander relied on evidence that shows the transaction in dispute was authorised in the banking app. It also says the transaction in question was sent to an account in Mr A's name. So, it believes the transaction was authorised. But, considering everything I've seen as outlined above, I don't think this is enough evidence to persuade me the transaction was authorised by Mr A.

Mr A's receiving account provider also supplied evidence to show that the transaction was only completed after being authorised via an email link and in the app. But I think it's likely someone else had access to his device and the ability to change his biometrics, so I think they would've also been able to authorise this transaction on the device.

Overall, I am persuaded that the evidence suggesting the transaction was not authorised outweighs the evidence that it was. So, I am upholding the complaint in favour of Mr A. Santander should put things right as set out below.

Mr A says he is unhappy that Santander initially told him his current account had not been compromised and he only discovered this later - this caused additional stress and inconvenience. I can understand this unfortunate incident must have been stressful for Mr A and I am sure it must have taken a toll on his well-being. But it is not Santander's fault that Mr A's phone was stolen. I have listened to the call Mr A first had with Santander when he reported the fraud and I've heard that the customer service advisor informed him about all the transactions on his credit card and current account at that time. Santander investigated Mr A's complaint and responded to him within a reasonable time frame. So, I can't say Santander did anything wrong in the handling of his complaint and so I don't think any compensation is due."

I invited both parties to respond with their comments. Santander has responded with some further points which I will consider below. Mr A accepted my provisional decision and had no further comments to add.

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.

Santander challenged my provisional decision saying there is no evidence Mr A's phone passcode or biometrics were compromised. I've thought carefully about the points it's raised but I still don't think these transactions were authorised. I'll explain why.

The test under the PSRs isn't whether I can exactly pinpoint how the fraud happened but whether these were authorised by Mr A. And I believe there are various scenarios which explain how his passcode could have been known – particularly if Mr A's phone had been targeted by fraudsters during the evening it was stolen. We have seen many examples where customers were targeted in a bar or other busy social environments and shoulder surfed while entering their phone passcode. And then later targeted for the device. Like I explained in my PD, had someone shoulder surfed Mr A entering his phone passcode, they

could've changed the biometrics on his phone by entering this same passcode to reset the fingerprint or face ID settings. Thus, providing access to all other apps which were secured by biometrics.

I've also considered the nature of the disputed transaction. There were several transactions made from Mr A's Santander account during the time he said his phone was stolen. All these transactions were refunded by Santander as unrecognised transactions except for the one transaction of £1,400 still in dispute. These funds were transferred into an account in Mr A's name with another provider. The fact that the funds were sent to another one of Mr A's accounts doesn't mean the transaction was authorised. And I am satisfied that Mr A has suffered a loss of this money as it was then used to buy cryptocurrency and transferred to untraceable accounts. This follows the type of activity usual when fraud is being committed. Whilst we need to be careful about saying certain payment patterns look like fraud, in this case I'm persuaded what happened here matches fraud-related activity. So, I think Santander should refund the remaining disputed transaction.

Putting things right

Santander should refund Mr A the disputed transaction amount in full and 8% simple interest from the date the transaction was made till the date it is paid back.

My final decision

I am upholding this complaint. Santander UK Plc should put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 June 2024.

Sienna Mahboobani
Ombudsman