

The complaint

Mr K has complained Santander UK plc won't refund him for a card transaction he didn't authorise.

What happened

Whilst overseas in November 2023, Mr K noticed a transaction on his Santander account he didn't recognise. This was carried out in a bar or restaurant for £1,114.33. He'd initially thought his card was missing but realised that he still had it.

Santander believed Mr K must have carried out this transaction as it was done using his genuine card and PIN.

Mr K brought his complaint to the ombudsman service.

Our investigator felt overall that it was most likely that Mr K had made the transaction. He also noted some discrepancies between what Mr K initially told Santander and subsequently confirmed to our service. He wasn't going to ask Santander to do anything further.

Mr K remained unhappy and although he couldn't explain how this fraud had happened, he was convinced that it would have been extremely odd of him to have spent all his available funds at the beginning of his time away leaving him to borrow from friends.

He asked an ombudsman to consider his complaint.

I completed a provisional decision on 13 June 2024 when I confirmed I believed the balance of evidence meant that Santander should refund Mr K in full.

Both Mr K and Santander accepted this outcome.

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.

Having done so, my final decision is along the same lines as my provisional decision. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

It's worth stating that I can choose which weight to place on the different types of evidence I review, including technical evidence, provided by financial institutions along with complainants' persuasive testimony.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where

appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Mr K's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves.

To help me come to a decision, I've reviewed the evidence Santander provided as well as what Mr K has told us.

I believe this disputed transaction was carried out without Mr K's authorisation. I say this because:

- Mr K was in a bar overseas and authorised an order for drinks at 21:41 on 3 November 2023. This came to £11.26. This transaction is not disputed.
- The genuine card and PIN were then used to authenticate three transactions carried out at 22:04, 22:51, and 22:52 in two potentially different locations. The last two attempts, both for £551.54, were rejected as Mr K then had insufficient funds to cover this attempted transaction.
- The transactions themselves alert me to potential fraud. These are massively higher values than the one transaction definitely carried out by Mr K.
- Mr K has told us he looked for his card but couldn't find it when he went to pay for another round of drinks. He searched around for his card for about 45 minutes but then later found it on the table. This doesn't match what Mr K initially told Santander. I have considered this discrepancy but accept that stories can and do change as people reconsider what happened in stressful moments.
- There is no clarity where the venue is where the 22:04 disputed transaction was carried out successfully. This couldn't have been that far away (because the card was definitely in Mr K's possession later). It's not unusual for bars and restaurants to have two different identities and merchant codes.
- Santander, during their investigation, wondered "*why return the card*". I suggest two factors – clearly Mr K's card was no further use to any fraudster and returning it delayed discovery. This also backs up the possibility that the two venues may be similarly located.
- There is sufficient evidence, based on the timing of the transactions, to suggest Mr K could well have been shoulder surfed when he carried out his initial transaction.
- If Mr K had carried out these disputed transactions himself, I'd see no reason why he wouldn't have known what funds he had available to him. He'd have been unlikely to attempt two later transactions after knowingly spending more than £1,000 at 22:04.
- I appreciate Santander's view is most likely Mr K drank and more expensively than he'd anticipated. Whilst that is a possibility, I see no reason why Mr K would have done this. As he himself says, why would he willingly spend all his money at the earliest opportunity whilst away.

I don't believe there's sufficient evidence to show Mr K authorised the disputed transaction.

It is not the case under the PSRs that I have to specifically identify a point of compromise to be sure fraud has happened. Nor is it my role to explain how fraud takes place. All I need is

to be satisfied there was an opportunity for fraud to take place and based on what I have seen here, I am.

In cases where we find it difficult to explain exactly what happened, the correct response isn't just to confirm the customer must bear the responsibility. This wouldn't meet the requirements of the PSRs. In Mr K's complaint, the nature of the transaction and his testimony outweigh other evidence.

Putting things right

As I've decided there's insufficient evidence to show Mr K authorised the disputed transaction, Santander will need to refund Mr K in full, along with 8% simple interest.

My final decision

For the reasons given, my final decision is to instruct Santander UK plc:

- To refund £1,114.33 to Mr K along with any associated foreign exchange fees and charges; and
- To add 8% simple interest to that amount from the date this debited Mr K's account to the date of settlement.

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

Sandra Quinn
Ombudsman