

The complaint

Mr M complains Santander UK PLC (“Santander”) refuses to refund him for transactions on his account he says he didn’t authorise.

What happened

Mr M, through his representative, has complained about several disputed payments made from his account to a third-party online. He also complained about several ATM withdrawals. Mr M says he has never used online banking and he didn’t make the ATM withdrawals in question.

Santander refused to refund the transactions in dispute. It said, as Mr M is related to the third parties who were apparently responsible for the transactions, this would be a civil matter and not one it should investigate.

Our investigator considered this complaint and felt Santander should have properly investigated it under the Payment Services Regulations 2017. She also considered the evidence provided by both parties and decided to uphold the complaint in part, suggesting Santander refund Mr M for the disputed transactions made online. Neither party responded, 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.

Generally speaking, Santander is required to refund any unauthorised payments made from Mr M’s account. Those rules are set out in the Payment Service Regulations 2017. Mr M said he didn’t carry out the transactions in dispute. So, I then must give my view on whether I think Mr M did authorise the transactions or not.

In relation to the ATM withdrawals, Mr M’s evidence is that he had given his PIN to a relative and his authority to use his debit card, but he says he didn’t authorise all the ATM transactions that followed. Our investigator considered this and concluded that as Mr M had given authority to a third party, and there is no evidence that this authority was withdrawn, Mr M should be held liable for all these transactions under the principles of apparent authority. And I agree. Nor Mr M or his representative have raised any objections to this in response to the view, so I have nothing further to consider on this point.

Santander maintains that Mr M authorised the first transaction to his third party relative and has provided evidence that Mr M’s relative had enough personal information about Mr M to pass the telephone security and speak to Santander on his behalf. From the evidence provided it also seems Mr M was present when the call was made to authorise this first transaction. The investigator examined the evidence and decided not to uphold Mr M’s complaint about the first disputed transaction – and I think that outcome is reasonable. Mr M nor his representative have disagreed with this, so there is nothing further for me to consider on this point.

The disputed transactions which followed, however were upheld by our investigator and I've outlined my findings on these here.

Mr M says he didn't use online banking and he didn't have a smart phone which could've been used to carry out any online banking activity. Mr M is an elderly gentleman and I've not seen any evidence to contradict what he has said about this. Online banking was reset on Mr M's account on 7 April 2023 and the disputed transactions began on that day. But I've not seen any evidence from Santander to show that it took any additional steps to ensure the online banking system was set up by Mr M himself, especially knowing his age and vulnerabilities.

Santander says it used one-time passcodes (OTPs) sent via SMS to Mr M's number to verify some of the transactions. But the evidence supplied shows that the disputed transactions were carried out using multiple devices and from multiple IP addresses. There is also evidence recorded that the device used was flagged for a SIM swap, which suggests suspicious activity. Based on what we know about Mr M I think it's unlikely he would have been using different devices to carry out this online activity or had been moving his SIM into other phones. I think it's more likely that Mr M's SIM had been taken by his relative and used in other devices to obtain the OTP, while also logging on to his online banking via different devices.

Looking at Mr M's bank statements I can see that prior to many of the disputed transactions, money had been transferred into the current account from Mr M's ISA. While Mr M did move money around his accounts prior to the transactions in dispute, it was not at this frequency. And I think it's likely this was also done by Mr M's relative in an attempt to disguise the outgoing transactions from the statement balance.

Overall, Santander has not persuaded me that Mr M authorised the online transactions in dispute from 10 April 2023 to 16 May 2023. Therefore, I think it is more likely these were unauthorised, and Santander should put things right as set out below.

Our investigator also awarded £500 compensation for the distress and inconvenience caused to Mr M as a result. Santander has not responded to dispute this award and I think this is reasonable, so I see no reason to differ this award.

Putting things right

Santander UK PLC should refund Mr M the transactions disputed from 10 April 2023 onwards and include 8% simple interest from the date they were made till the date they are refunded. Santander should also pay Mr M £500 in compensation for the distress and inconvenience caused.

My final decision

I am upholding this complaint in part as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 September 2024.

Sienna Mahboobani
Ombudsman