

The complaint

Mr H has complained Santander UK Plc won't refund him for transactions he didn't authorise.

What happened

In October 2023, Mr H complained to Santander about transactions from his account to a merchant I'll refer to as "N". Santander placed blocks on the account, but it refused to refund the payments.

Mr H wasn't satisfied and so he complained to this service, stating that the transactions were unauthorised. He explained that he took out a subscription with N for his children to use, followed by a second subscription which was taken out as part of a partnering package through Company S.

Santander said N had confirmed the disputed charges were linked to Mr H, and the account was set up in 2014. It also confirmed there was another account with a partner payment which was set up in 2022, and which was linked to Mr H with a different email address. Both accounts were deactivated by Mr H in July 2023.

Santander said there was no information about the initial payment in 2019 because of the time that had passed, but card details were registered on the account, and the evidence showed he'd authorised the transactions. It said there was nothing to suggest the account was compromised and a third-party fraudster was using his card, and the disputed transactions were small monthly payments, which wasn't consistent with fraud.

Our investigator didn't think the complaint should be upheld. She identified regular monthly payments to N from Mr H's Santander account from 18 April 2019 to 1 October 2023 and she noted that he didn't report the disputed transactions to Santander until October 2023. She said there was no evidence that he reported the transactions to Santander before October 2023, so it couldn't have prevented them from debiting his account before then. And when it was made aware of the transactions, it cancelled Mr H's card and applied blocks to the account.

She explained that a payment out of someone's account can only be treated as authorised if it has been consented to, and if the transactions weren't authorised, Santander would have no authority to debit the account. She noted that the transactions were made using a continuous payment authority ("CPA"), which is when card details are provided giving permission to take multiple payments, rather than one-off payments.

Our investigator was satisfied that when the CPA was set up, Mr H authorised and consented to the recurring payments. She explained that, due to the time that had elapsed, Santander was unable to show how the initial transaction was authenticated, but given Mr H accepted he took out the first subscription and his genuine card details would have been required to set up the CPA, she thought it was likely the payments were authenticated.

Finally, our investigator explained that if a chargeback claim had been raised, its more than likely N would've evidenced that the service paid for was provided in exchange for the

payments, so she didn't think Santander's decision to not raise a chargeback claim was unreasonable.

Mr H has asked for the complaint to be reviewed by an Ombudsman.

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, I've reached the same conclusion as our investigator. And for largely the same reasons. I know Mr H feels strongly about this complaint and this will come as a disappointment to him, so I'll explain why.

When we look at complaints where there isn't a way of proving exactly what happened, we have to consider, on balance, what mostly likely happened and I'm afraid that the only possible conclusion is that Mr H authorised the CPA and didn't cancel it until July 2023. So, he's not entitled to a refund of the payments from Santander.

Authorisation has two limbs – authentication and consent. So, Santander needs to show the transactions were authenticated as well as showing Mr H consented to them.

The transactions were made using a CPA, which is when card details are provided to the merchant giving it permission to take recurring payments, rather than one-off payments. Authentication can be shown by the correct account details being used for the payments. Santander has explained that there's no information available about the initial payment due to the passage of time, but Mr H accepts having taken out a subscription for his children and so I'm satisfied, on balance, that he must have provided his genuine card details authorising N to set up the CPA. So, I'm satisfied that the transactions were authenticated.

Turning to the issue of consent, Mr H hasn't suggested that his card details were compromised or that the subscription was taken out by a fraudster. He contacted N in July 2023 to ask for both subscriptions to be cancelled, but there is no evidence that he contacted Santander until October 2023, so I'm satisfied he consented to the transactions and that this consent wasn't withdrawn.

I understand Mr H is unhappy that there was a period when he was paying for two subscriptions, but he doesn't dispute that he took out the first subscription, I'm satisfied the CPA and the recurring payments were authenticated and consented to (and therefore authorised) and there's no evidence that he asked Santander to cancel the payments before October 2023. So, he's not entitled to a refund.

Chargeback

Finally, I agree with our investigator that if a chargeback claim had been raised, its more than likely N would've evidenced that the service paid for was provided in exchange for the payments, so Santander's decision to not raise a chargeback claim was fair.

My final decision

My final decision is that I don't uphold this complaint.

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

Carolyn Bonnell
Ombudsman