

The complaint

Mr C complains that Santander UK Plc won't refund disputed transactions made from his account.

What happened

Mr C says that fraudulent online transfers, totalling just over £45,000, were made on his account between February and December 2017.

Mr C says that he was in custody between February 2017 and October 2018. During this time he granted his parents Power of Attorney for his account, and only direct debits transactions were authorised by him. He was also expecting a large inheritance to be deposited by his parents.

The transactions that Mr C's disputing are all online transfer's made to Mr C's ex-partner. Mr C explains that prior to being in custody he used his ex-partner's phone to view his online banking on more than one occasion. And he suggests that his internet banking security details might have been saved in his ex-partner's phone. He's also advised of writing his internet banking details down on pieces of paper stored in his car and possibly saving them in his ex-partner's notes on her phone.

Mr C complained to Santander in June 2019. Santander investigated but said at that point they didn't have enough detail about which transactions Mr C was disputing, so wouldn't refund them.

Mr C wasn't happy with Santander's response he complained to our service. On Mr C providing more details about the transactions he was disputing our investigator asked Santander for their opinion.

They thought it most likely Mr C authorised them, but also suggested he'd brought the complaint out of time according to the Payment Service Regulations 2009. In summary they said:

- To log onto online banking customer password must be entered each time and can't be auto saved on a device.
- They don't have a record of a Power of Attorney registered.
- If Mr C's ex-partner obtained his details via the notes or the pieces of paper Mr C had written his details on then Mr C would have failed in his duty to protect his details.
- The transactions occurred in 2017, but Mr C didn't raise them until June 2019; and
- Mr C made four complaints about his account in 2018, which indicates he was aware of his account activity.

Our investigator reviewed Mr C's complaint, but didn't recommend it should be upheld. In summary, he felt unable to conclude that the transactions had been made fraudulently and was persuaded they were most likely authorised by Mr C.

Mr C didn't accept our investigator's opinion. In particular he said:

- His car was sold when he went to prison.
- His security details might have been saved on his ex-partner's phone – but that doesn't mean he gave her consent.
- He hasn't informed the police about the fraud, because of other ongoing separate matters.
- The bank should have contacted him or his parents to authorise the transfers.

As Mr C didn't agree it's 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.

Having done so, my review of the evidence has led me to the same overall conclusions as the investigator previously set out and for much the same reasons.

Generally, Santander can hold Mr C liable for the disputed transactions if the evidence suggests that it's more likely than not that he made or authorised them himself.

I'm satisfied from the bank's technical evidence that Mr C's genuine online security details were used to make the disputed transactions. But the regulations relevant to this case say that is not, on its own, enough to enable Santander to hold him liable. So I also need to think about whether the evidence suggests that it's more likely than not that Mr C consented to the transactions being made.

From what I've seen, I don't think it's unreasonable for Santander to conclude that Mr C authorised the transactions. This is because:

- For Mr C's ex-partner to carry out the disputed transactions, without Mr C's consent, she'd have needed access to his online security details. Mr C's provided a number of explanations for how his ex-partner obtained these details – including his details being saved in her phone, written down in the notes or the pieces of paper in his car. Santander have explained that online passwords can't be auto saved and need to be entered each time. So I've ruled out this possibility. I think it's possible that Mr C's ex-partner obtained his details via the notes on her phone or via the pieces of paper in his car, but I don't think this is the most likely explanation. I say this as Mr C has explained his car was sold prior to his time in custody and he didn't seem confident that his details were stored on her phone.
- Mr C didn't raise his transactions with Santander until June 2019. He's explained not finding out about the fraud until this time. But I find this surprising. I say this because Mr C was released from custody in October 2018 – this is over a year after the fraud started. I'd have expected Mr C to have reviewed his account at this point. During 2018 Mr C raised separate complaints about the overdraft charges on his account, indicating he had an understanding about the account balance. And, Mr C explained he was expecting an inheritance, which was paid into his account immediately prior to the fraud. In summary I'd have expected him to question the fraudulent transactions much sooner than he did.
- Mr C didn't contact the police about the fraud. I find this surprising considering the large amount of money he's lost and the fact he was aware of the likely fraudster.

Mr C's explained he didn't contact the police due to other ongoing matters, but for the reasons I've already explained I don't find this explanation plausible.

Mr C responded to our investigator's view with further points, including questioning why didn't Santander contact him or his parents to check they'd consented to the transactions. Santander have explained that they hadn't been notified by Mr C about a Power of Attorney for his parent's – and I've no reason to doubt this. For this reason I wouldn't have expected Santander to contact Mr C's parents to check the transactions. But I've considered his point about the other transactions and whether I think Santander should have attempted to contact Mr C to confirm he consented. But, I'm afraid I wouldn't have expected them to do so in these circumstances. It's clear there is a change in account activity once the cheque for £33,000 was paid into Mr C's account in April 2017. But all the large payments from this point go to an existing payee set up by Mr C prior to his time in custody. So I wouldn't have necessarily expected the transactions to trigger Santander's fraud detection systems. Even if I thought it should have triggered the bank's systems it doesn't change my conclusion. I say this because I'm satisfied – for the reasons I've already outlined – that it's more likely than not Mr C authorised the disputed transactions. And therefore I won't be asking Santander to do anything further here.

My final decision

My final decision is I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 December 2020.

Jeff Burch
Ombudsman