

The complaint

Ms M complains that Santander UK Plc won't refund transactions she says she did not make and does not recognise.

What happened

Ms M is disputing three transactions all made to the same electronic money institution, which I'll refer to as W.

Date	Amount	Type of payment
25/8/2020	£1,200	Electronic using card details– verified by 3DS Secure
<i>29/9/2020</i>	<i>£1,000</i>	<i>Cash paid in</i>
	<i>£400</i>	<i>Cash paid in</i>
	<i>£500</i>	<i>Cash paid in</i>
	<i>£3,000</i>	<i>Credit card cash advance deposit</i>
30/9/2020	£4,313	Open Banking faster payment – initiated using third party provider W
1/10/2020	£795	Open Banking faster payment – initiated using third party provider W

Ms M first raised concerns about the transactions to Santander on 4 January 2021. She's explained she was unable to raise them any sooner as she'd been going through a difficult time in her personal life after being unwell and suffering a bereavement.

Ms M told Santander that around the time the disputed transactions happened she was very ill and receiving support from carers as well as family and friends. She said she allowed them access to her phone to be able to call the hospital. She said that no one else knows her online banking security information. Ms M told the bank that her family would not have made these transactions.

Santander then asked Ms M to contact her mobile phone network. She did so, but the phone network was unable to confirm if her device had been compromised.

Santander declined Ms M's fraud claim. It said it was not clear how someone else could have known Ms M's online banking details or accessed the one-time passcodes that were sent to her registered mobile phone number to authenticate the payment requests. It pointed out the IP address recorded for the disputed faster payments is the same one Ms M usually uses to log into online banking.

Ms M was unhappy with how the bank's investigation had been handled. Santander issued its final response on 17 March 2021. The bank said it had investigated further but still could not find any evidence to support that Ms M's security details had been compromised.

Ms M referred her complaint to this service. Our Investigator looked into it but did not recommend it should be upheld. He concluded it was more likely than not that Ms M had authorised the disputed transactions as he couldn't see how it would have been possible for someone else to have made them.

Ms M responded to say that she was offended by the speculation that she was somehow involved or responsible. She felt the outcome was unfair and unjust. She provided an extract from industry guidance suggesting that suspicious transactions should have triggered some form of interaction from the bank. She also provided a link to a newspaper article about reimbursement for victims of authorised push payment scams in support of her case.

As no agreement could be reached, Ms M's complaint was passed to me for a decision.

My further investigation

When the complaint was referred to me, I undertook some further investigation to clarify Ms M's response.

I contacted her and explained that I understood her complaint to be about three payments made to W that she did not recognise and was not involved in making. I explained that if this is correct, the payments in dispute are not scam payments and the newspaper article she'd referred to would not be relevant to her complaint.

Ms M responded to let me know that as far as she was aware the transactions happened because her phone or her phone number was compromised.

I also contacted W. I found out the disputed funds went into an account Ms M holds with W. From there, the funds were all sent to the same recipient. W said other transfers had been made to the same recipient and no concerns had been raised about any of the payments. The reference for the payments appeared to be in connection to a regular payment for a household bill.

I asked Ms M about the account with W and whether she recognised the payments. Ms M responded to say that she had used W in the past but not for the payments she was disputing. She did not comment on what I'd said about the funds appearing connected to a household bill. She said she suspected two people that could have been involved but that had not come to anything and confirmed she had nothing further 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.

When considering what is fair and reasonable, I am 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.

In cases when it is not clear what happened, I base my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence.

There's a lot of money involved in this dispute so I can understand why Ms M is concerned. But having considered everything that's been said and provided, I think Santander can fairly hold Ms M liable for the disputed transactions. I will explain why.

Whether a payment transaction has been authorised or not is important because account holders will usually be liable for payments they've authorised and, generally speaking, banks will be liable for unauthorised payments. If Ms M made the disputed transactions herself or authorised for them to be made on her behalf, it would not be fair to ask Santander to refund them. But Ms M says she was not involved in the payments in dispute.

I'm satisfied from the bank's technical evidence and records that payment tools that were issued to Ms M (such as one time passcodes sent to her registered mobile phone number and other personalised security features) 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 her liable. So, I also need to think about whether the evidence suggests that it's more likely than not that Ms M consented to the payments being made using her payment tools.

Some of the background information to this complaint isn't as clear as it might be. This is understandable as Ms M has explained she was very ill and under a lot of stress at the times the disputed transactions happened. She has told me that as far as she is aware, they happened because her phone or phone number was compromised.

I've considered the options for what's most likely to have happened. These are that the withdrawals could have been made by an unknown third party, by someone known to Ms M, or by Ms M herself. From what I've seen, I don't think it's unreasonable for Santander to conclude that Ms M authorised the transactions. This is because:

- The pattern of spending doesn't fit that of an unknown third-party fraudster. There is a significant gap of just over a month between the first transaction and the second transaction. It seems unlikely that an opportunistic fraudster would wait so long to use an account again if they had access to it. I think an opportunistic fraudster would want to gain as much benefit as they could and as quickly as they could before the fraud is detected.
- I'm also mindful that the funds were all paid into an account Ms M holds with W. But I don't think an opportunistic fraudster or someone known to Ms M would want to do this. It creates an extra barrier for them to be able to utilise the funds as they would also need to have access to Ms M's account held with W. They are unlikely to deliberately involve another financial institution and risk the fraud being detected.
- Ms M has explained that her phone or phone number has been compromised in some way. Ms M's phone network was not able to confirm whether this had happened. But in any event, a third-party having access to Ms M's phone number on its own would not have been enough to enable someone else to carry out these transactions. To make the transactions required more information than just the one-time passcodes that were sent to Ms M's mobile number. Whoever made the transactions would have also needed additional personalised security information including Ms M's card number and details and Ms M's log in details for both her Santander account and her account held with W. Ms M has said that no-one else knows this personalised security information. I've not seen anything that explains how someone else could have accessed this information.
- I'm also mindful that the day before one of the disputed payments happened, there were cash deposits into Ms M's account along with a cash advance from her credit card. Ms M has not disputed that she made this cash advance from her credit card. It seems more likely than not that Ms M was getting money together for a specific purpose, especially as the amount of money deposited is very close to the amount transferred to W around the same time.

- I cannot ignore the information I received directly from W. It told us Ms M's account at W has been used to make regular payments to the same payee. The reference added to the payments appears to relate to a regular household commitment. I'm not persuaded a third party would derive any benefit from making this payment.

Overall

Having considered everything, all of the available evidence points to it being more likely than not that Ms M made the transactions herself. I realise that is a very difficult message to give, but that is what the available evidence leads me to believe here. This means that Ms M can be held responsible for them. As such, I cannot fairly and reasonably require Santander to take any further action in relation to this matter.

My final decision

For the reasons I have explained above, my final decision is that I don't uphold Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 17 March 2022.

Claire Marsh
Ombudsman