

The complaint

Miss K has complained that Santander UK Plc unreasonably refused to refund a series of transactions debited from her account between 17 and 18 December 2021 following the loss or theft of her phone and debit card on 17 December.

What happened

After Miss K had been at the supermarket shopping, she noticed her phone was missing and then she noticed her card was missing. She reported the loss of her phone to her mobile phone provider and her card to Santander plus reported both to the police. She bought a new phone and her mobile phone company provided a SIM with her original number.

Then she discovered there was several transactions which occurred on 17 and 18 December which she did not authorise. So, she asked Santander to refund them. Santander investigated the matter and decided that because One Time Passcodes (OTP's) were sent to her mobile phone to complete the transactions and it didn't believe her mobile phone security could be bypassed, it refused her claim. Miss K complained but Santander refused to change its stance.

So, she brought her complaint to us. The investigator didn't think it should be upheld. Miss K disagreed so her complaint was passed to me to decide.

I issued a provisional decision on 13 April 2023 and I said the following:

'There are several issues that concern me as regards the conclusions reached by Santander. The first being the evidence it sent us, which it itself agrees is confusing. Much of the technical screenshots aren't that helpful and singularly don't appear to show extensive online banking which it now believes Miss K did.

Santander appears now to be relying on the fact that the OPT's sent to Miss K's phone then needed to be entered into the online banking app to complete the authentication process for the purchases. But I don't consider this correct. It didn't say that in the final response letter or in any of its contact notes with Miss K. It only started to say that in its communication with the investigator.

More importantly the app verification for online payment (Strong Customer Verification) was supposed to be introduced during 2018. However, it only became fully active on 14 March 2022 which is after these disputed transactions on Miss K's account. Therefore, it's clear to me that the OTPs for the disputed purchases on Miss K's account most likely did not need inputting into any Santander banking app for cogent authentication, contrary to what Santander is now saying needed to have occurred. It's clear to me that in all probability the OPTs were simply sent as a text to Miss K's phone which then could be entered into the merchants' website to complete the transactions.

So that brings us back to the loss or more likely theft of Miss K's phone and card. We don't know if Miss K's phone was locked when it was stolen. Or if the thief saw her inputting the pattern code which locked her phone. But it seems on balance to me, given the disputed transactions included transactions for betting companies, where there's no previous betting transactions on her account; a mobile phone top up from a company not connected to Miss K mobile phone provider; plus several purchases from a store where Miss K doesn't have an account, that it's likely the security on her phone was breached sufficiently to receive the OPTs sent by Santander for the use of her also stolen card. Given there were also attempts to use the card details after Santander had cancelled it, further persuades me the transactions were likely fraudulent and therefore unauthorised under the regulations. Lastly Miss K further took the step of reporting it to the police and getting a crime reference number too.

Therefore, I consider Santander should now refund all the disputed transactions with interest from the date of the transactions. This is because the payments to the mobile phone top up and purchases are distance contracts – so under the relevant regulations these should be refunded.

The transactions to the gambling merchant are excepted contracts, so not covered by the distance contract regulations. However, I haven't seen anything to suggest Miss K failed in her obligations to protect her security details either intentionally, or with gross negligence. So, under the relevant regulations I consider these should also be refunded.

I consider this caused Miss K some considerable trouble and upset, especially over the allegations that she was using online banking when Miss K said she wasn't. So, I consider Santander should pay Miss K £200 compensation.'

Miss K accepted my provisional decision. Santander queried why I believed the gambling transactions were unauthorised given that any winnings are usually credited to the same account and in this case Mrs K received £100.00 from one of the gambling merchants on 20 December 2021.

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 again, I remain of the view that this complaint should be upheld.

I agree it's unusual for a fraudster to do gambling transactions given the winnings usually go back to the account they came from so they might not see any benefit. However, there is also the possibility that the gambling merchant realised there was an issue with the transaction and refunded it themselves. That is the type of thing I would expect Santander to find out for itself too, which it hasn't done here.

So, this doesn't change my view on the complaint as a whole, given the reasons I gave above in my provisional decision namely, the following:

'But it seems on balance to me, given the disputed transactions included transactions for betting companies, where there's no previous betting transactions on her account; a mobile phone top up from a company not connected to Miss K mobile phone provider; plus several purchases from a store where Miss K doesn't have an account, that it's likely the security on her phone was breached sufficiently to receive the OPTs sent by Santander for the use of her also stolen card. Given there were also attempts to use the card details after Santander had cancelled it, further persuades

me the transactions were likely fraudulent and therefore unauthorised under the regulations. Lastly Miss K further took the step of reporting it to the police and getting a crime reference number too.'

However, the refund amount Santander now needs to pay to Miss K should be less the £100 refunded by the gambling merchant

My final decision

So, for these reasons it's my final decision that I uphold this complaint.

I now require Santander UK Plc to do the following:

- Refund the disputed transactions to Miss K adding interest of 8% simple from the date of the transactions to the date of its refund (less the £100 refunded by the gambling merchant on 20 December 2020). If income tax is to be deducted from the interest, appropriate documentation should be provided to Miss K for HMRC purposes.
- Pay Miss K the sum of £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 1 June 2023.

Rona Doyle
Ombudsman