

The complaint

Mr S is unhappy that Santander UK Plc won't refund him for transactions he says he didn't authorise.

What happened

Between April and September 2021, there were 35 payments made from Mr S' bank account to an online gambling company totalling £23,632. Mr S reported these transactions to Santander in September 2021 as payments he didn't make.

Santander declined Mr S' claim as some of the gambling transactions were funded with transfers from his linked account. Since the transfers from the linked account were made using Mr S' own device and passcode, they believe the transactions were authorised.

They also said that Mr S didn't report the disputed activity until September 2021, despite being a regular user of online banking. They thought there would be no benefit to a fraudster to make gambling payments, as any winnings would credit Mr S' account. They gave Mr S 30 days' notice to withdraw his banking facilities.

Unhappy with this, Mr S raised a complaint. He told Santander that he thought a family member may have looked over his shoulder to learn his passcode and access his online banking. He asked them to reconsider their decision and reiterated that he didn't authorise the transactions.

Santander said they were unable to amend their original decision to decline Mr S' claim and said that they'd be closing his accounts as per the notice he was given. Mr S referred his complaint to our service.

Our investigator said that he was persuaded Mr S authorised the payments to the gambling company. And that Santander had acted within the terms and conditions in closing Mr S' account. Mr S disagreed and asked for an ombudsman to review his complaint.

My provisional decision

I issued a provisional decision on 14 November 2022, and I made the following findings:

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

Santander have provided technical evidence which shows the payments were made using Mr S' genuine card number and CVV details, so I'm satisfied the transactions were authenticated. But this on its own isn't enough to say Mr S is liable for the transactions. I also need to be satisfied that based on the evidence, it's likely that Mr S himself made, or otherwise authorised the transactions.

Mr S' bank statements show that the majority of the disputed transactions were made within a matter of minutes after the internal transfers from his linked account. Santander have provided persuasive evidence to show that Mr S' own mobile phone device was used to carry out the internal transfers and these funds were then used to make the disputed transactions.

I think this likely means that the person that carried out the internal transfers also made the disputed transactions to the gambling company. And to do so, they would've required access to Mr S' mobile phone.

I've thought about the explanation Mr S has provided that his family member may have carried out the transactions. But the family member or a third party, wouldn't have been able to make the transfers without also knowing Mr S' five-digit passcode. Mr S has suggested that the family member may have looked over his shoulder and seen him enter his passcode unbeknown to him.

Whilst that's not improbable, it doesn't explain how the family member, or a third party was able to access Mr S' phone more than around 25 times across a five-month period without Mr S realising.

Mr S has said that he lives with his girlfriend who doesn't have access to his online banking or passcode. And he's confirmed that she can be ruled out as the person that carried out the disputed transactions.

I don't think it's feasible that a family member or third party would've been able to gain access to his mobile phone, use it to complete the internal transfer and then return it to him unnoticed on several occasions. I think this is very unlikely as it significantly increases the risk of Mr S becoming aware of the activity.

Mr S has confirmed that having spoken to the gambling company, the disputed transactions were made using his own account with them. So, it doesn't explain how the family member, or third party also knew Mr S' log in details for the account with the gambling company.

I think it's highly unlikely that someone who had access to Mr S' online banking would use the funds to carry out gambling transactions using an account in Mr S' own name. There would be no financial benefit for them to do so.

This is because the winnings/credit withdrawals of over £12,000 were paid back into Mr S' account. I think they'd be more likely to transfer funds out of Mr S' account into a different one where they can make a financial gain.

And even if the family member or third party carried out these transactions for enjoyment rather than financial gain, I think they're more likely to use any winnings to gamble further rather than withdraw it to credit Mr S' account, especially since the winnings would also show on Mr S' bank statement which could lead to him discovering the fraud.

Also, Mr S didn't initially report any concerns to Santander about the internal transfers which funded the disputed transactions to the gambling company. Since Mr S had checked his statements for unauthorised use, I'd reasonably have expected him to report that he hadn't made the internal transfers either.

Based on the evidence and on balance, I think Mr S authorised the internal transfers himself. It follows, I think he also authorised the disputed transactions and therefore Santander can fairly hold him liable.

Mr S is also unhappy that Santander have closed his accounts and have accused him of committing fraud against them.

I've listened to the relevant phone calls, and I think Santander made it clear to Mr S before discussing the details of his fraud claim that it was important he was honest with them. As if they deemed he had carried out the transactions, then they'd close his accounts and he wouldn't be able to bank with them anymore.

I don't think it was unreasonable for Santander to conclude that Mr S wasn't being completely honest based on the explanation he initially gave them, as it was difficult for them to understand how anyone else could have carried out the internal transfers which funded the gambling transactions.

Based on the circumstances, Mr S' testimony and the evidence, I don't think it was unreasonable for Santander to have legitimate concerns over the authenticity of his claim.

Santander are within their rights to decide to end their relationship with Mr S and the terms and conditions allow them to do so. However, since Mr S held a basic bank account, they could only close his accounts in very specific circumstances as set out within the Payment Accounts Regulations 2015.

Having considered the rationale for Santander's decision, I'm satisfied under the regulations they were entitled to close Mr S' account immediately without giving any notice – although they opted to give Mr S 30 days' notice.

I know the account closure caused Mr S upset and it was inconvenient for him, but as explained, Santander are allowed to make this decision and could've closed his accounts immediately if they wanted to. So, I can't agree they've treated him unfairly."

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.

I invited both parties to respond to my provisional decision with any further submissions.

Santander confirmed they had nothing further to add. Mr S told us he doesn't accept the decision. So, there's no new evidence or comments for me to consider.

I'm satisfied with the findings I reached in my provisional decision, and I see no reason to deviate from the outcome I explained.

My final decision

For the reasons explained, 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 S to accept or reject my decision before 11 January 2023.

Ash Weedon
Ombudsman