

## The complaint

Mr H is unhappy Santander UK Plc hasn't refunded debit card transactions on his current account that he's reported as unauthorised.

## What happened

The details of this complaint are well known to both parties, so I will not repeat them again in detail here. The facts are not in dispute so I will focus on giving the reasons for my decision.

Mr H complains about transactions on his current account over a 20-month period. During this time he didn't have access to his card and due to a change in address, Mr H wasn't receiving regular statements. He wants Santander to reimburse him for all the transactions that left his account during this period. Santander has said this is a civil matter and that the transactions were made by someone known to Mr H.

I issued a provisional decision on this case in November 2022. My findings were as follows:

*It's not in dispute that Mr H's situation means he was unable to directly make any of the disputed transactions using his debit card. But it's also not disputed that the transactions were completed by someone who had Mr H's physical card and also knew his PIN number. What I have to decide is whether or not these were completed by a third party who had authority from Mr H. And/or whether or not a third party was able to gain access to Mr H's account due to his gross negligence.*

*Mr H has explained to our service that he doesn't recall sharing his PIN with anyone. And he's unable to recall when he last had his card or where his card was before his change in circumstances. Considering the transactions, it was clearly left somewhere where another party was able to find and use it. However, as this person also knew Mr H's PIN, it seems most likely that the card wasn't found by an unknown third party. And - as Mr H has said himself - the way the transactions take place suggest the third party knew about Mr H's circumstances.*

*The account was used for everyday spending over a period of more than 18 months. Money was paid in at regular intervals, including when the account went overdrawn. What we'd expect to see if a card had been stolen or found, is for the account to have been drained quickly. It seems the third party was confident that they would be able to access and use this account for a period of time, as they used it in the same way as someone would use their own current account.*

*Mr H has said all the transactions were unauthorised and he didn't share his PIN with anyone. While Santander has suggested who may be using Mr H's account and why they may have been authorised, it hasn't provided any persuasive evidence of this. Even if the transactions were carried out by a person known to Mr H this doesn't mean they had his authority, or apparent authority, to do so. And we can see that once Mr H updated Santander of his new address and received historic statements, he reported the disputed transactions quickly and*

*had the account frozen. So on balance, I find it unlikely that the person using Mr H's card was doing so with his authority. In-line with the Payment Services Regulations 2017 (PSRs), Mr H isn't liable for payments he didn't authorise unless he failed with gross negligence, or intent, to comply with the terms of the account or keep his personalised security details safe.*

*Mr H has said it's highly likely he did keep the letter he was sent by Santander with his PIN. It's not clear who would've had access to this letter, but by keeping this and not destroying it, or then changing the PIN, Mr H has failed to keep his personalised security details safe. It's very apparent from looking at the letter what security information it provides. But even if Mr H didn't keep the letter, as I accept he wasn't 100% sure of this, it seems he must have kept some other identifiable record of his PIN. He's said he can't recall if he had it written down somewhere. I can't see another explanation for how someone successfully knew and used his PIN, when he says he didn't personally share the PIN with anyone. As it seems most likely Mr H's PIN and card were kept in a way that a third party could access them, this means Mr H has failed with gross negligence to keep his security details and account safe.*

*On that basis, Mr H is liable for the payments made from his account, despite the fact they were carried out by a third party.*

*There are however a few exceptions to this. At several points the transactions on Mr H's account mean he goes into an unarranged overdraft. Under the Consumer Credit Act 1974, Mr H is not liable for unauthorised transactions using a credit facility. There is no test for gross negligence under this Act. As I'm satisfied Mr H didn't authorise these payments, he should be refunded any payments while he was overdrawn. Some payments on the account are funded partially by Mr H's own funds and partially by an unarranged overdraft. The unarranged overdraft portion of these payments should be refunded to Mr H (by my calculations, a total of just under £100). And it should also refund Mr H any fees or charges that were applied to his account due to the unauthorised overdraft.*

*It's accepted by Santander that it didn't deal with Mr H's concerns over the unauthorised transactions in an acceptable way. It took several letters from Mr H over a long period of time for it to begin to investigate the transactions. And it was nearly a year later when it issued a final response to this. As a result of that, it's awarded Mr H £150 compensation. As the account was correctly frozen and no further transactions occurred after Mr H reported his concerns, I can't see he's lost out financially as a result of the delayed investigation. But I do accept he was inconvenienced by having to send multiple letters and contact our service to get any response. Considering the impact of this, I think £150 is an appropriate sum. Mr H has requested these funds be paid to an account he is able to access, which isn't unreasonable. So Santander needs to work with Mr H to get this money into the type of account he's detailed.*

Santander responded to my provisional decision and accepted it. It agreed to pay Mr H £150 in compensation and said it still owed him another £50 in compensation that it had previously awarded on another linked complaint. And it agreed to refund all the transactions that were made using a credit facility with associated fees.

Mr H didn't respond to the provisional decision. It was issued to him by his requested communication method over eight weeks ago. So at this time I consider it appropriate to move forward with the complaint and issue a final 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.

As neither party has disagreed with the findings I reached or provided any additional comments for me to consider, I see no reasons to change my findings from my provisional decision.

So I'm partially upholding this complaint in line with the findings reached in my provisional decision, included above in the background section of this decision.

## **Putting things right**

Santander UK Plc should refund all the payments/partial payments made from Mr H's account using the unarranged overdraft. And any associated transaction fees linked to the unarranged overdraft.

It should also arrange to pay Mr H £150 compensation for the delays in answering this complaint. And the £50 it has told us it still owes Mr H from his other, previous but linked complaint.

We have separately communicated to Santander about how it could arrange to pay Mr H these funds. It should correspond directly with Mr H about how it can now make these payments to him.

## **My final decision**

For the reasons set out above, I partially uphold Mr H's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 February 2023.

Amy Osborne  
**Ombudsman**