

The complaint

Mr R has complained Santander UK plc won't refund five card transactions he's disputed.

What happened

In July 2022 Mr R called Santander to notify them of transactions he didn't recognise. He'd been alerted as he didn't recognise transactions that were carried out in a foreign currency.

Santander reviewed these transactions but believed the evidence showed these had been authorised by Mr R. Mr R said he'd been asleep at the time these had taken place. The financial losses from these transactions had caused him serious financial distress and health issues. Mr R brought his complaint to the ombudsman service.

Our investigator reviewed the evidence provided by both parties. He felt this showed Mr R had authorised the transactions.

Unhappy with this outcome, Mr R has asked an ombudsman to consider his complaint.

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, I've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm 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.

The regulations which are relevant to Mr R's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. Other factors do apply but nothing else specific in Mr R's case.

So to help me decide what happened, I've looked at the evidence of the transactions, as well as what Santander and Mr R have told us. I'm specifically aware that Mr R has questioned why he'd spend his monthly salary straight after receipt and the financial distress this episode has caused.

Mr R has disputed five online card transactions. Three of these were made in US Dollars and two in euros. He was charged the foreign exchange conversion costs which means the total in dispute is nearly £2,990.

He has also queried our investigator's view that these transactions were properly

authenticated. He doesn't believe this amounts to authorisation as required under the PSRs. In fact authorisation is made up of two aspects: authentication and consent. In some cases the evidence about authentication will be sufficiently compelling that it is clear the customer must have consented at the time of authentication. I think this is the case here and I explain why below.

I believe it's more than likely Mr R authorised these transactions. I say this for the following reasons:

- The transactions required authentication. These were authenticated by a one-time passcode being sent to Mr R's phone which he then entered. And also by the use of Mr R's fingerprint. As these methods of authentication were used, I don't see how the transactions weren't also being consented to by Mr R at the same time.
- There's no evidence of compromise to Mr R's card, account or devices.
- The IP address used for all of these disputed transactions match an address regularly used when Mr R accesses his Santander account.
- Mr R's Santander account was being accessed throughout the time of the five disputed transactions. The values involved mean it would be difficult to miss these debiting Mr R's balance. Particularly as he notes his salary had only just gone into his account.
- How would an unknown third party be aware that this was the time when there were sufficient funds in Mr R's Santander account to make the disputed transactions? Apart from the possible visceral thrill of gambling, I don't think there's any possible gain from an unknown third party undertaking these transactions. Unknown fraudsters generally operate for financial gain.

Mr R has wondered why these card transactions weren't blocked as he believed they didn't reflect his normal account use. However I see that a month before there were three gambling transactions undertaken (amounting to £260) which weren't disputed. It's also the case that up to two hours before the first of the disputed transactions, three £100 gambling transactions – which haven't been disputed – took place.

I appreciate the distress this has all caused Mr R. He has lost a considerable amount of money. However I think it's more than likely – as the evidence shows – Mr R authorised the transactions. On that basis I won't be asking Santander to do anything further.

My final decision

For the reasons given, my final decision is not to uphold Mr R's complaint against Santander UK plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 21 August 2023.

Sandra Quinn
Ombudsman