

## The complaint

Mrs N complains that Santander UK Plc have held her liable for cash machine (ATM) withdrawals which she says she didn't make or otherwise authorise.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In January 2023 Mrs N reported to Santander that her purse and the cards it contained had been stolen. The purse contained debit cards relating to her two Santander accounts, one with an account number ending 8214 and the other ending 9113. There had been activity on both the cards that Mrs N disputed. In relation to the card linked to account 8214 Santander provided a refund of the disputed transactions. This was based on the card having recently been used and the possibility that a third party had seen her use the PIN.

But for the card associated with account 9113 there was no point of compromise for the PIN (which Mrs N says was different compared to her other card). This card had been used for ATM withdrawals totalling £300 which Mrs N disputed. And as the withdrawals had required the use of the PIN, Santander declined to offer a refund. Mrs N complained and when Santander maintained their position, she referred the matter to our service.

One of our Investigators considered the complaint but didn't recommend it should be upheld. She didn't think the outcome Santander had reached was unfair. Mrs N still disagreed and asked for an Ombudsman to make a decision. In July 2023 I issued a provisional decision in which I said:

*"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 a different outcome compared to that of our Investigator. So, I'm issuing this provisional decision to give everyone a further opportunity to comment."*

*Mrs N has stated she believes it's possible for withdrawals from her two accounts, to have been made on one card. I'm satisfied that withdrawals would only have been possible from each account using it's respective card. So I don't agree this is a possibility or a reasonable explanation for what took place.*

*The disputed payments from account ending 8214 have all been refunded, so I won't comment further on them. The remainder of my comments are in relation to the debit card associated with the account ending 9113.*

*The evidence from Santander shows that the usage of Mrs N's card is indicative of unauthorised use. That is it shows numerous attempts to make cash withdrawals, some of which were declined, on occasions because there were insufficient funds. And ultimately three £100 withdrawals were successfully made. All this activity happened in a short space of time on the same day and soon after Mrs N says her purse was stolen.*

*So, on balance, I think these were unauthorised transactions. That being, I accept Mrs N's testimony that her purse was stolen, and I don't think she gave permission for any third party to transact using her card.*

*However, the relevant regulations (The Payment Services Regulations 2017, 'PSRs') say that generally a customer will only be liable for authorised transactions and a bank will usually be liable for unauthorised transactions. The exception to this is if the customer has failed with intent or gross negligence to keep their security credentials (in this case the PIN) safe and secure.*

*Mrs N says that she hadn't written down her PIN. But there is a note of a call that she had with Santander when reporting her cards as stolen which says: "Customer has stated she had the PIN written down for one of her cards." Mrs N has since sought to clarify that the PIN that was written down was for an account not held with Santander. I don't question Mrs N's integrity. But based on the available information and evidence, on balance, I think it's most likely she is genuinely mistaken and that she did have the PIN for her Santander card written down. And that this was with or close to her card in her purse. This seems to be the only plausible explanation for how a third party came to know the PIN. The previous use of the PIN took place around a month earlier, negating the likelihood of it having been observed.*

*I consider writing a PIN down and keeping it with or very close to the relevant card to be grossly negligent. So, I don't think Santander need to refund the disputed payments for that reason.*

*However, the PSR's only apply when there is a credit balance in the account. And the notes from Santander indicate that of the disputed £300, £47.10 was credit, presumably in the form of an overdraft. Where unauthorised transactions occur using a credit facility then the Consumer Credit Act 1974 (CCA) will apply in place of part of the PSRs.*

*In a broad summary this means that a consumer isn't liable for the use of the credit facility unless they or someone acting as their agent used the facility. Gross negligence or otherwise isn't a consideration. But in such circumstances the terms of Mrs N's account allow Santander to decline to refund up to £35 of the unauthorised use of the credit facility.*

*So here, as I'm not persuaded Mrs N authorised the £47.10 part of the transaction that involved credit, I think that should be refunded to her. And if Santander decides to deduct £35 from that amount, I think it would be fair and reasonable that they inform her of this when refunding the balance above that amount. I also think 8% simple interest should be added to the final refund from the date of debit from the account to the date of settlement."*

Santander responded and said they accepted my provisional decision. They also stated their intention to deduct the £35. Mrs N responded with some further comments which I'll address below.

### **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.

Mrs N explained that having used one card in branch, she was able to instruct payments from another of her accounts with Santander. In sharing this I think we have cleared up the misunderstanding on that point. It would appear that branch staff used Chip and PIN on one card to verify Mrs N's identity (rather than to make a payment), and they were then happy for

her to instruct payments from any of her Santander accounts on that basis. I remain satisfied that each card can only be used to make payments from its linked account.

Mrs N re-iterated her position that she hadn't written the PIN down but beyond this didn't have any meaningful further comments or evidence. I've reconsidered this, but for the reasons I've stated above, it doesn't change my mind as to the outcome of the complaint. I still think it's most likely that Mrs N had recorded her PIN and kept it alongside her card.

### **My final decision**

For the reasons outlined above my final decision is that I uphold this complaint in part.

Santander UK Plc must:

- Pay Mrs N £47.10 (if Santander intends to rely on its account terms to deduct £35 from this amount it may do so, but it should inform Mrs N of this).
- Add 8% simple interest to the amount refunded to be calculated from the date it debited Mrs N's account, to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 6 September 2023.

Richard Annandale  
**Ombudsman**