

## The complaint

Mrs P complained because Santander UK plc refused to refund her for 12 cash withdrawals which she said she didn't make.

## What happened

On 13 April 2023, Mrs P contacted Santander, to report that she'd lost her card. Santander asked her about 12 cash machine withdrawals which had taken place on her account between 9 April and 13 April, for amounts ranging from £50 to £200. The total was £1,350. Mrs P said she never went to the places where Santander said the payments took place, and she hadn't made any of them.

Santander stopped Mrs P's card, but it refused to refund Mrs P. She complained. On 25 April, Santander wrote to her, saying the reason was that the disputed transactions had been verified using Mrs P's genuine debit card, and her correct PIN.

Mrs P was still unhappy. Santander wrote again on 8 May. It said that what Santander did in these circumstances was to establish how the card and PIN might have been compromised. Here, Mrs P's genuine card had been used for the withdrawals. Mrs P had told Santander that she hadn't told anyone what her PIN was, and she hadn't written it down. As Santander hadn't been able to identify how anyone else might have obtained the card and PIN, it wouldn't refund her. Santander suggested that Mrs P could contact the police, and ask them to investigate – for example by looking at any CCTV from the various cash machines involved. Santander said that if she could identify a third party and successfully prosecuted them, she could try to reclaim the money by starting civil proceedings against that person.

Mrs P wasn't satisfied and contacted this service. Mrs P is in her mid 80s and she explained to us that she was disabled and didn't go out, except once a month when her husband took her. The last time she used her card herself she'd been in bed. She'd looked everywhere and couldn't find it. Mrs P also said she told Santander that she hadn't been to any of the places where the cash withdrawals took place. There had also been some cash withdrawals which hadn't gone through but had been credited back to her account. Mrs P believed that the only explanation was that it was an "inside job" by some Santander staff.

Our investigator didn't uphold Mrs P's complaint. She said the technical evidence showed that the withdrawals had been made using Mrs P's genuine card and correct PIN. Mrs P had said she hadn't written down her PIN and hadn't given it to anyone. And as she hadn't used the card anywhere where someone could have looked over her shoulder and watched her entering the PIN, no-one could have found it out that way.

The investigator also thought that it wasn't likely that any Santander employee had carried out the transactions, and explained that the genuine card was used. It wasn't likely a Santander employee could have obtained this from Mrs P's home. She didn't think that Santander had reached the wrong conclusion when it had declined Mrs P's fraud claim.

Mrs P was very unhappy about this. She asked for an ombudsman's decision. She said the only people who knew her PIN were Santander who had given it to her. And she didn't

understand how some of the transactions hadn't gone through but had been refunded into her account, which she didn't think could happen automatically but would have been done by a Santander person. Mrs P asked for an ombudsman's decision.

### **My provisional findings**

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision.

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

In my provisional decision, I explained that there are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So the issue for me to determine was whether it was more likely than not that Mrs P carried out the transactions herself. If she authorised someone else to carry out the transactions for her, this would also count as carrying out the transactions herself.

I couldn't tell for certain who took out the 12 cash withdrawals, because I wasn't there. But it often happens that we don't have all the evidence we'd like, and when that happens I take my decision on what I think is more likely than not to have happened.

The technical computer evidence showed that Mrs P's genuine debit card was used. It's not generally thought possible for the chip on a card to be copied, and the computer inside the cash machines read and identified the genuine chip for all the withdrawals. And Mrs P's correct PIN was also used. There are 10,000 possible combinations of a four-digit PIN. So it wasn't likely that any thief who had stolen Mrs P's card could have guessed the number.

But there were multiple other factors which point to Mrs P not having carried out the transactions herself:

- The technical evidence showed, among other things, the times at which the cash withdrawals were made. The majority were at times of day when I considered it's most unlikely that someone in their mid 80s with health problems would have been driving round, or been driven there by her husband, to withdraw cash. For example, the first withdrawal on 11 April was at 3.39 am. The first on 13 April was at 00.24 am. Others took place in the late evening or very early morning. And if Mrs P had asked someone to withdraw cash for her, it's unlikely they'd have done so at those times.
- The locations of the cash machines were mainly at post offices and supermarkets. I checked some of the locations in relation to Mrs P's home. Those I checked were up to about 10 miles from her home, generally to the west and north-west. Mrs P lives in a city, and I could see no reason why she'd have gone to these locations if she'd wanted cash. There would have been many nearer cash machines.
- Mrs P's own evidence was that she's disabled, with a health condition, and only goes out once a month when her husband takes her. I looked at her statements and there was no history of cash withdrawals on her account, let alone ones which are some distance from her home and in the middle of the night. I also listened to the phone calls between Mrs P and this service, and these didn't indicate that Mrs P might have

mental health problems which might have meant she'd made the disputed withdrawals herself but had just forgotten.

- In addition to the cash withdrawals which went through, there were some which were rejected by the machines. Three were rejected because the withdrawal limit had been exceeded. This pointed to a third party, as Mrs P would have known the limit. And I could also see that from 12 April, four transactions were stopped as suspected fraud – but Santander didn't contact Mrs P to check whether the transactions were genuine. I thought it would have been fair and reasonable for Santander to have contacted Mrs P. It didn't do so.
- The repeated pattern of the transactions, as fast as the withdrawal limit would allow, is also typical of a fraud. Fraudsters typically maximise their gain by carrying out multiple transactions as quickly as possible.

I recognised that Mrs P's theory was that it was a Santander employee who carried out the transactions. I didn't agree with that. First, whoever carried out the withdrawals had Mrs P's genuine card. I couldn't see how a Santander employee could have got into Mrs P's home and stolen her card. Also, Santander employees wouldn't have access to Mrs P's PIN number. Many processes are automated, including sending out PIN numbers, and aren't done by individuals. PINs can also be changed by recipients to a number they can more easily remember. Similarly, when the computer stopped some of the withdrawals (as I've explained above), this would have been done as an automatic process by the computer. No individual person would have manually refunded the credits. So I didn't consider it was possible that a Santander employee carried out these disputed transactions.

Taking all these factors into account, I considered that what was most likely to have happened was that someone stole Mrs P's card from her home, at some point shortly before the first disputed withdrawal on 9 April. This could have been a carer, medical visitor, someone who helped her in her home, or anyone else who visited or had access to her home.

I recognised that Mrs P said she didn't write down her PIN, and it was difficult to see how the thief could have known the right number if this was so. But the thief who might have stolen the card could have been someone who knew her well or had access to her personal information, meaning they might have worked out Mrs P's PIN. It wouldn't be right for me to know what Mrs P's PIN was, but it might have been something like her day and month of birth, or a number that mattered to her and was easy for her to remember, or a very straightforward number like 1234.

I recognised the difficulties when the customer's genuine card and correct PIN were used for disputed withdrawals. But in all the circumstances of this case, I considered it was more likely than not that Mrs P didn't authorise the transactions herself nor authorise anyone else to carry them out. And I also thought that Santander ought fairly and reasonably to have contacted Mrs P to ask whether the transactions were genuine.

So my provisional decision was that I intended to order Santander to refund Mrs P, with interest from the dates of withdrawal to the date of payment.

### **Responses to my provisional decision**

Santander accepted the provisional decision.

Mrs P said that she'd been with Santander for many years. She was unhappy that Santander hadn't contacted her as soon as the disputed payments started, and hadn't stopped the

transactions. She was also unhappy at having been told that Santander wouldn't repay her and she'd have to go to the police if she wanted to take it further.

### **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 reconsidered, and in the light of the responses, I consider that my provisional decision was fair and reasonable in all the circumstances of this complaint.

### **My final decision**

My final decision is that I uphold Mrs P's complaint. I order Santander UK plc to pay Mrs P:

- £1,350 to refund the 12 disputed transactions between 9 and 13 April 2023; and
- interest at 8% simple from the dates of withdrawal to the date of payment.

If Santander deducts tax from the interest on the award, it should provide Mrs P with a tax deduction certificate to show how much it has deducted, in order to allow Mrs P to reclaim the tax from HMRC if appropriate to her personal circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 7 December 2023.

Belinda Knight  
**Ombudsman**