

## **The complaint**

Mrs K complains that Santander UK Plc ("Santander") failed to refund transactions made from her account that she didn't recognise.

## **What happened**

### *What Mrs K says*

Mrs K says a close family member (referred to here as M) was living with her and gained access to her account without her permission.

Mrs K received a large payment into her account and made a large transfer to two family members, including M. Shortly after, M started to make payments (mainly to himself). Over the course of about three weeks, M withdrew about £7,500 from the account by logging into Mrs K's banking app through her own phone.

Once Mrs K noticed these withdrawals, she contacted Santander about them. Santander declined to refund the payments from her account. Mrs K complained to Santander about their lack of preventive measures. She believed that Santander should have warned her about the unusual series of payments leaving her account which wasn't the typical way she used it.

### *What Santander say*

Santander were first made aware that the payments leaving Mrs K's account were unusual when she contacted them. Mrs K explained what had happened but didn't wish for a further fraud investigation to take place or for the police to be notified.

Santander wrote to Mrs K and explained that as the payments were made via her registered devices and the genuine security details were entered, they wouldn't refund her. She was advised to consider the matter through civil action.

### *The investigation so far*

Mrs K brought her complaint to the Financial Ombudsman Service for an independent review where it was assigned to an investigator. Both parties were asked for information about the situation and Mrs K was able to explain that:

- At the time of the disputed transactions, M was living with her.
- She'd mentioned to M that she was going to go to the bank to transfer funds between her accounts.
- She received a large payment (£17,000) into her account that triggered the outgoing disputed transactions.
- She now believed that about £9,000 had been taken from her account.
- Her security details were recorded in code, written down in a book. Mrs K didn't initially believe anyone could successfully interpret them correctly to log in to her account.
- M worked out her login details (and later admitted this to her).
- She wouldn't usually check her account due to most bills being set up as direct

debits.

- She strongly believes that Santander failed to protect her account by not informing her of the unusual pattern of payments leaving her account.
- She had made undisputed payments to M's account herself including a large transfer (£4,000) to him just prior to the disputed transactions starting.
- M transferred funds from her savings account to her current account before sending those payments to himself.

Santander responded with information about the situation, in summary this said:

- Mrs K didn't raise a fraud claim, so no investigation was carried out by Santander.
- Mrs K hasn't identified which payments she believes are unauthorised.
- Santander understand it amounts to about £7,500.
- All the disputed payments were made from Mrs K's registered payment device and used her legitimate login details.
- They would have no reason to suspect there was anything wrong due to previous undisputed payments made to M's account, which came from Mrs K's own account.
- Santander would look further into the matter if Mrs K raised a claim and reports the matter to the police.
- Further details about the transactions were also supplied, along with call recordings.

After reviewing the evidence, the investigator made recommendations about Mrs K's complaint, which in summary said:

- The complaint wasn't upheld.
- There was no plausible explanation how M could have obtained the login details to Mrs K's phone and her Santander account without Mrs K noticing.
- Santander didn't have any grounds to notify Mrs K about the transactions.
- The transfers don't fit the pattern of a typical fraudster due to the period of time they were taken over and the relatively small amounts of the transactions.
- It was thought overall that Mrs K was responsible for the disputed transactions.

Mrs K disagreed with the investigator's outcome and said that she'd now reported M to the police and he now had a criminal record as a result of his actions.

Mrs K was asked to provide evidence of the police investigation and the resulting conviction against M. Mrs K was unable to provide anything and the police were contacted directly about this case. They confirmed a report was received but no further action was taken based on Mrs K's wishes.

As no agreement could be reached, the complaint has now been passed to me for a 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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Santander can hold Mrs K liable for the disputed payments if the evidence suggests that it's more likely than not that she made them or authorised them.

Santander can only refuse to refund unauthorised payments if it can prove Mrs K authorised the transactions, but Santander cannot say that the use of the online payment device conclusively proves that the payments were authorised.

Unless Santander can show that consent has been given, it has no authority to make the payment or to debit Mrs K's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mrs K. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mrs K responsible for the disputed transactions or not.

It's Mrs K's case that M was responsible for making a large number of transactions from her account without her permission, following the receipt of a large incoming payment. Mrs K has said that M was able to work out her online credentials and use her phone to make payments to himself, which he later admitted to her. Mrs K believes Santander are at fault for allowing this to take place and they should have contacted her about the unusual nature of the payments.

Having looked at how the account operated, it's apparent that Mrs K was making payments to M's account for some time prior to the receipt of the large payment and a further payment instruction was also set up prior to the receipt of the funds into the account. So, as far as Santander would be concerned, the payments to Mr M's account were a normal function of the account. Whilst those transfers increased after the large payment arrived, there was also more money available to spend, so this wouldn't particularly raise any alarms with Santander. Mrs K has confirmed she herself made a large £4,000 payment to M once she received the payment of £17,000 into her account. I don't think there were sufficiently unusual aspects to the payments to M for Santander to alert Mrs K to what was happening with her account, particularly as the payments were made using her own device and banking credentials.

Coming to the issue of authorisation – Mrs K received the payment on 16 March 2023 and made the £4,000 payment to M's account on the same day. The bulk of the remaining funds were transferred to Mrs K's savings account. Looking at the payments made after this, there's a £400 payment to Mr M's account the following day. Mrs K hasn't been specific about which particular transactions to M she's disputing, but I've assumed the additional payment the day after the large payment is one of them. That would mean Mr M had either already worked out the login to her account and delayed using it or was able to work it out almost immediately.

The payments that went through the account include multiple transfers from the savings account, some of them went straight onto Mr M's account, whilst some incoming transfers weren't all transferred. This appears to be a measure of management to ensure the account had sufficient funds to operate. Mrs K said she didn't look at her account much as most bills were made through direct debit. I accept that her bills were generally settled by direct debit, but there were also a substantial number of card payments, and I was surprised that Mrs K wasn't looking at her account more regularly. From the way the funds move, someone was managing it to make sure there were sufficient funds available.

One particular series of transactions indicated to me that Mrs K was aware of money moving into and out of her account. That's when a payment from M was received by Mrs K for £300 with a reference for "rent" and that same day, £300 was taken from an automated teller machine (ATM) in cash. I think this shows Mrs K was aware of these funds and used her card to withdraw the cash.

When Mrs K first reported the situation to Santander, she didn't want a fraud investigation or to speak with the police. Santander said they'd look into the matter if Mrs K contacted the police. Later, Mrs K advised she had contacted the police and later told our service M had a criminal record for theft as a result of her report. Unfortunately, there's no evidence of the police investigation as it appears Mrs K didn't want them to look into the matter. A recent update from the police was that Mrs K's report was recorded as no further action (NFA). Whilst I understand her desire to protect her family member, without corroboration that M was responsible, I don't think that Santander should be the ones to replace her funds, if indeed M was the one who used Mrs K's account without her permission.

There are a large number of individual payments to M, sometimes three or four a day. That would require knowledge of the account credentials and repeated access to Mrs K's phone. I accept that at the time M was living with her, but the sheer number of transfers, with some for as little as £5, indicates that there was apparently little risk to M when he was repeatedly using Mrs K's phone. I have some difficulty accepting that Mrs K was unaware of the repeated use of her phone, especially over multiple days and months it took to use the funds from the savings account.

Given the way the account was managed, and the type of payments sent to M's account, I don't think it's likely this was done without Mrs K's knowledge. I can't know for sure what happened as I wasn't present, but there are indications that M already had knowledge of the account details because a payment to him was made very soon after the large payment was received. I just don't think it's likely M was able to immediately decipher Mrs K's banking credentials.

I do appreciate she was in a difficult place following the loss of a family member and Mrs K says she wasn't concentrating on her account, but the evidence points to someone managing it. I do think that the management and the use of the account to make small payments indicates M had knowledge of the account prior to the disputed transactions and was comfortable using it.

If someone was accessing the account without the account holders knowledge (which is Mrs K's case), it's normal for much larger transactions to take place to reduce the risk of exposure. Why would someone repeatedly have to risk taking the phone and make multiple small payments when they could make one bigger payment?

Once someone is provided this access, as I think likely happened here, the account holder effectively assumes responsibility for the use by them (here M) of the account. I don't doubt there was an element of M taking advantage of Mrs K, but this doesn't mean that Santander should have to refund that money. Mrs K will no doubt disagree that she gave M authority to use her account, but I'm afraid the pattern of transactions and the way the account was used point to this arrangement.

Either Mrs K herself was using the account and was aware of these payments – which raises the question of why it took so long to report them, or M already had access to the account and was using it to make payments to himself and to keep the account topped up for Mrs K's normal expenditure. In both of these cases Mrs K would be responsible for the use of her account.

I've repeatedly sought information from Mrs K to support her case that she wasn't responsible, but her repeated claims that M admitted to it and had a criminal record aren't backed up the available evidence, so it's difficult for me to base a decision on this conflicting picture.

While I'm sure Mrs K will disagree with me, and whilst I empathise with her predicament, the evidence that I've considered leads me to the conclusion that, on the balance of probabilities, it was more likely than not that Mrs K authorised or allowed her account to be used to make the payments. So, taking everything into account, I think it is fair and reasonable for Santander to hold Mrs K responsible for these transactions.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 15 March 2024.

David Perry  
**Ombudsman**