

## **The complaint**

Mrs M complained because Santander UK Plc refused to refund her for a transaction she said she didn't make.

## **What happened**

On 12 April 2023, there was a payment from Mrs M's account to a banking services company. It was for the sterling equivalent of £439.54, and as it had been made in a non-sterling currency, there was also a currency conversion fee of £12.97. The transaction had been made using a mobile payment service.

The next day, Mrs M rang Santander to dispute the transaction. There was a discussion about the device used for the transaction. The adviser asked whether Mrs M had authorised a new mobile payment service being set up on her account on 8 April. She said she'd paid her annual subscription of £79.90 to an entertainment company. But that payment was made on 10 April, and the adviser was asking about the setting up of the new device on 8 April.

Mrs M confirmed she'd already got the mobile payment service on her phone, and one on her watch which she said she didn't often use. The technical records show that these were set up in 2021 and 2022. The adviser told her about another device, which had been set up on 8 April 2023, and was labelled with another name. Mrs M told the adviser that apart from her son's tutor, whom she never paid that way, she didn't know anyone of that name.

The adviser also told Mrs M that there had been multiple declined transactions, all made online through Mrs M's mobile payment service. These had been attempted both to the same banking services company which had received the successful payment, and to a cryptocurrency exchange. Mrs M asked why she hadn't been contacted. The adviser said that Santander had tried to phone Mrs M on 11 and 12 April. He checked the number of her phone. The number Santander had was one which Mrs M said had been her number a long time ago. She said she'd notified Santander a long time ago, and that she'd also had security check messages from Santander in the middle of the night about other suspect transactions – and those had come to her current correct phone number. So she asked if someone had changed the number. The adviser said that as Santander hadn't been able to contact Mrs M, it had blocked all internet transactions. As I'll set out below, Santander later said that this adviser had given Mrs M incorrect information.

Mrs M was clear that she hadn't been told by anyone to make the transactions, or had any suspect calls. She said the only new transaction she'd done was the annual subscription to the entertainment company. She was worried that had triggered the fraud, but the adviser said they had no information about that. The adviser warned Mrs M about taking care, and said the account might be targeted again.

Santander deleted the three devices which had been registered on Mrs M's account: her mobile, her watch, and the new one which had been registered on 8 April. But it didn't refund Mrs M with the £439.54 payment or the currency conversion fee of £12.97. Mrs M complained.

In Santander's final response to Mrs M's complaint, it said that when Mrs M had phoned on 13 April, Santander's adviser had told her that at the time of the disputed transaction, it had phoned her. But the number which the adviser said had been used to make that call, wasn't Mrs M's phone number. Instead, Santander now said that the only number registered on Mrs M's account since 2017 had been the correct one. It sent her the call recording, and apologised that its adviser on 13 April had given her the wrong information about the number to which a one-time passcode had allegedly been sent. Santander paid her £100 to apologise for this – but it didn't refund her with the disputed payment or currency conversion fee.

Mrs M wasn't satisfied and contacted this service.

Our investigator didn't uphold Mrs M's complaint. She said that the mobile payment service had been registered to a new device on 8 April, and whoever had set that up on Mrs M's account had known her bank card details. And a one-time passcode had then been sent to Mrs M's mobile on 8 April, which had been used to approve setting up the new payment method. The disputed payment had then been made three days later using the newly registered device.

Mrs M didn't agree. She said that she thought it must have something to do with the annual payment to the entertainment company, because that had been the only one-time passcode she'd received. Mrs M said she hadn't made the new registration on 8 April, and was upset because Santander had said she was a liar. Mrs M said that when paying the entertainment company, she'd clicked to pay by her mobile payment service, and had then entered the one-time passcode.

Mrs M 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 I considered whether it was more likely than not that Mrs M carried out the disputed payment.

First, the annual subscription payment to the entertainment company couldn't have been the cause of the fraud, because Mrs M made that on 10 April, and the new mobile payment service was added to Mrs M's account on 8 April.

The disputed payment on 11 April was carried out using the mobile payment service which had been added to Mrs M's Santander account on 8 April. I've looked carefully at this. In my provisional decision, I said that I hadn't seen any computer evidence to prove that the addition of this new service was authorised by a text with a one-time passcode being sent to Mrs M's correct phone number. It was what Santander said in its investigation notes, but I couldn't see any computer evidence that this had been sent, or that it had been sent to the correct number. Santander's statement made it appear that setting up the new mobile

payment service had been authorised by Mrs M. But there were other factors which argue against this.

First, the device didn't match Mrs M's, but was a new one. The cardholder name didn't match either. The IP address (a unique computer identifier) was abroad, and was one which Mrs M hadn't previously used. I looked at Mrs M's statements, and there were multiple local transactions in the UK around this time. These included some to coffee shops which, when the Santander adviser was going through the payments with Mrs M, she said was the one which was within the premises where she worked. So it didn't appear at all likely that Mrs M was in fact abroad at this time and carried out either the registration of the new device and mobile payment service, or the disputed transaction. The language used on the identifier for the mobile payment service, and for the cardholder name, wasn't English.

I looked at the attempted payment transactions on 11 April. The first, for the sterling equivalent of £439.54, was processed at 22:37 and was the one which appeared on Mrs M's bank statement. There were many others which were rejected. These started with an attempt a minute later for the sterling equivalent of £1,318.63, which was rejected on the grounds of insufficient funds. Subsequent payments, all attempted within minutes, were tried but all rejected. This was because Santander's system had stopped them for suspected fraud, but the person carrying them out wouldn't have known that. The payments attempted were for gradually decreasing amounts, presumably because the person attempting them hoped that the problem was simply one of the balance in the account and therefore tried smaller sums. They were all to be sent either to the same banking services company, or to a cryptocurrency organisation. The pattern of these transactions strongly indicates a fraudster.

I also listened to the 13 April call recording when Mrs M rang Santander. I consider that her evidence on that call indicates that she genuinely didn't make the payment.

This is a complex situation. The main argument against a finding in Mrs M's favour is that Santander says it sent a text and one-time passcode to Mrs M's registered phone number - but I said that I couldn't be satisfied on the evidence I had that a one-time passcode was indeed sent to Mrs M's registered phone. Whoever carried it out must also have known Mrs M's Santander card number. I couldn't tell how or where that happened - either at Mrs M's workplace, or where she carried out a genuine transaction, or someone with access to her home. But I saw nothing to indicate that Mrs M was negligently careless with her personal details. In fact I thought it was likely, from what she said, that she is very careful with such details. She was insistent on this to the Santander call handler, and she refused to provide some information to him on grounds of security. She told us about her personal circumstances too, and I thought it was very unlikely she'd have been careless. So, taking all the above factors into account, I considered it was more likely than not that it wasn't Mrs M who set up the new mobile payment service on 8 April, or the payment itself on 11 April. I considered it's more likely than not that it was a third party fraudster.

As I considered it's more likely than not that it wasn't Mrs M who carried out the new registration for the mobile payment service, or the disputed transaction, I said that I intended to order Santander to refund Mrs M with the disputed £439.54 and the currency conversion of £12.97. This would be payable with interest at 8% from the date of debit to the date of payment.

I also considered the distress and inconvenience suffered by Mrs M. Santander paid her £100 compensation for its adviser having given her incorrect information. In practice, the upset in these circumstances results mainly from the fraudster rather than the actions of the bank. But I considered it would have been reasonable to expect Santander to have taken into account some of the strong indicators which would have led it to a finding that it hadn't been Mrs M who authorised the payments. Examples include the setting up of a new mobile

payment with some details which didn't match known existing details, and the fact that the transactions were carried out abroad. If it had done, I thought Mrs M would have suffered less anxiety. So I considered Santander should pay her a further £50 for distress and inconvenience.

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

Mrs M thanked us for the provisional decision.

Santander didn't accept the provisional decision. It focused on my comment that I hadn't seen any evidence to show that the setting up of the payment service on the new device in April had been authorised by a one-time passcode being sent to Mrs M's correct phone number and a response being received from that phone. Santander said that a document it had sent us showed that the payment service had been registered by a one-time passcode. It asked what more I'd want to see, if this wasn't sufficient.

Santander acknowledged that the rapid attempts to spend via the payment service led it to believe that Mrs M hadn't authorised the transactions. But it said it had declined the claim because it couldn't identify how the one-time passcode had been compromised after being sent to Mrs M's registered number.

### **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.

In particular, I've looked again at the technical computer document which Santander sent to us in relation to the authorisation of the new device on Mrs M's account in April. As I mentioned in my previous decision, the technicalities here are complex, and fraud is always evolving. I accept that the document to which Santander refers does include Mrs M's current phone number. It's entered in a box labelled with a Santander-specific technical term. But I'm not persuaded that this shows both that a one-time passcode was indeed sent to Mrs M's phone, and that a correct response was entered. I've also borne in mind that Santander's first adviser told Mrs M that a different number had been used, and that the computer was later updated to show Mrs M's correct number.

I've also balanced this document against all the other factors which I highlighted in my provisional decision. These included:

- The device used for the disputed transaction and attempted transactions was a new one, and the cardholder name didn't match Mrs M's;
- The IP address was abroad, and was one Mrs M hadn't used before. There were also multiple local UK transactions around the date when the disputed transactions took place, including some at a coffee shop within the premises of where Mrs M worked, indicating that she hadn't been abroad at the time;
- The disputed transaction took place in the middle of the night;
- The pattern of the attempted transactions is consistent with a fraud. I've set this out above, but there were repeated attempts and within a very short space of time;
- Having listened to Mrs M on the call recording when she rang to report the dispute, I consider that her evidence was compelling and truthful.

Taking all these factors into account, I still consider that it's more likely than not that Mrs M didn't authorise the disputed transaction herself. So I uphold this complaint.

### **My final decision**

My final decision is that I uphold Mrs M's complaint.

I order Santander UK plc to pay Mrs M:

- £439.54 refund for the disputed transaction;
- £12.97 for the currency conversion charge on the disputed transaction;
- Interest at 8% on the above two payments from the date of debit to the date of payment;
- A further £50 compensation for distress and inconvenience, making £150 in total;
- If Santander deducts tax from the interest on the award, it should provide Mrs M with a tax deduction certificate to show how much it has deducted, in order to allow Mrs M 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 M to accept or reject my decision before 14 February 2024.

Belinda Knight  
**Ombudsman**