

## **The complaint**

Mr D complains that Santander UK Plc is holding him liable for transactions on his account which he didn't authorise.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Mr D has explained that he got in touch with Santander when he realised his estranged wife had made numerous unauthorised transactions from his Santander sole account. Ultimately, Santander and Mr D couldn't reach agreement about things, so Mr D referred his complaint about Santander to us. As our Investigator couldn't resolve things informally, the case has been passed to me for a decision.

I emailed Mr D and Santander on 4 March 2024 explaining what I was minded to decide. Now that both parties have had fair opportunity to comment further, I've reviewed the case further, and I'm now ready to explain my final 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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I've reached materially the same conclusions as in my email dated 4 March 2024 and for the same reasons. I appreciate since this time Mr D has said that he wants Santander to prove that it was him who carried out these transactions. And he's said that Santander failed to even log a complaint about the fraud in November 2022 when he first contacted it about it. But these points haven't changed my mind. I explained in my email of 4 March 2024 why I don't think it has been unreasonable for Santander to treat the disputed transactions as authorised. And I can see that whilst Santander could have responded more quickly on things at the start, Mr D was sent Santander's final response in April 2023, and this hasn't changed my mind about the crux of the complaint which is how Santander has held him liable for transactions he says he didn't authorise. I've explained my reasons again below.

## **Authorisation**

Generally, unless Mr D authorised a transaction, Santander had no authority to debit his account. A payment out of Mr D's account can only be authorised if he consented to it. So, it's not enough for Santander to show how the transactions were *authenticated*. To decide

Mr D authorised the transactions, I'd also need to be persuaded that Mr D most likely *consented* to the transactions.

With this in mind, I understand Mr D has explained that he met his now estranged wife in 1992, they moved in together in 1993, and ultimately he gave her his debit card and PIN to buy things. I understand Mr D has since said that he didn't do this. But bearing in mind I understand they were married, and Mr D's estranged wife didn't work (or didn't always work), it seems most likely to me that Mr D did give his estranged wife the ability to make payments, even if looking back now he's dissatisfied she made more payments than he says he would have approved of. If this happened, I'm sorry Mr D has needed to contact us in these circumstances. That said, it seems to me it's most likely Mr D gave his estranged wife access to make payments. I'm satisfied therefore that any transactions made by Mr D's estranged wife are most likely to have been *authenticated* using security information Mr D knowingly permitted his now estranged wife to have for purposes which would include making payments.

With regards to *consent*, it's important to highlight here that under The Payment Services Regulations ("the PSRs") this doesn't depend on Mr D having been fully aware of the details of each payment. If Mr D's estranged wife made the payments within the bounds of the *actual* authority that Mr D gave her, Mr D would be bound by her acts. But Mr D can also be bound by the acts of his estranged wife which *appear* to have been made with Mr D's authority. This is called *apparent authority*, such that if Mr D permitted his estranged wife to *appear* as if she had his authority to make payments, those payments could be deemed as authorised (and consented to), even where Mr D didn't know about or ask his estranged wife to make *all* the payments at the time.

I understand Mr D's position is that he did not give his estranged wife *actual* authority to make the disputed transactions. But even if I accepted this was correct, Mr D appears to have given his estranged wife authority to make payments. And in the absence of evidence persuading me otherwise, I think that if Mr D's estranged wife made the disputed transactions, this was in circumstances where Mr D had permitted her to appear as if she had Mr D's authority to make payments, such that *apparent authority* was given. And whilst I've thought carefully about what Mr D has said about how his estranged wife was coercive (despite him saying, at the very least with regards to some of the payments, that he also wasn't aware of them at the time), I'm not persuaded this would mean I could fairly ask Santander to refund the payments as unauthorised.

### Prevention

Santander would generally be expected to process payments a customer authorises it to make. And Mr D is presumed liable for the loss in the first instance, in circumstances where the payments are deemed authorised. That said, as a matter of good industry practice Santander should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect Santander to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments (allowing customers ready access to their funds).

Bearing this in mind, I've considered whether I think – *if* I accepted Mr D's estranged wife did fraudulently misappropriate funds from his account (and I'm not necessarily saying that I do think that) – that I could say Santander acted fairly and reasonably in its dealings with Mr D in processing the disputed payments as it did. In assessing whether a particular payment instruction, or a sequence of payment instructions, was unusual enough to warrant

intervention from Santander, I'd reasonably expect Santander to take into account what it knew about Mr D and his previous account activity. But here, I'm not persuaded the disputed payments ought to have looked suspicious or unusual enough to Santander such that it reasonably ought to have intervened in the payments before it followed the instructions it received to make them. This means I'm not persuaded I could say Santander unreasonably failed to prevent the payments.

This means – since I'm not satisfied Santander has unreasonably deemed the payments to be authorised, and I don't think I could in any event say any unreasonable acts or omissions on Santander's part were the cause of the loss Mr D's has claimed – that I can't reasonably uphold his complaint or tell Santander to refund him.

### **My final decision**

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 16 April 2024.

Neil Bridge  
**Ombudsman**