

The complaint

Mr H says there are transactions on his personal and business (sole trader) account with Santander UK Plc which he disputes being responsible for.

What happened

Mr H was abroad in March 2023. He told our service he was in one nightclub but got into a fight and had to leave. At this point he lost his glasses. He was then invited into another nightclub and was charged £1,800 for two bottles of champagne he didn't order. Mr H says he was under duress as he was threatened by the people that worked at the nightclub and was concerned for his safety so felt he had to pay. He's also said because he'd lost his glasses he couldn't see small font, he befriended a group of individuals and one of these had access to his phone and online banking to assist him.

The statements show that on 27 March 2023 transfers were made from Mr H's personal account to his business account and the disputed transactions were then made from this account to a third party online. These transactions were for the following amounts: £900, £2,000, £4,000 and £11,000. As mentioned above there was also a transaction of £1,800 made from Mr H's personal account which he says was made under duress. Although Mr H tried to get his money back from the individual, only £2,580 was returned. As such, Mr H is still out of pocket, and he would like to be reimbursed by Santander.

Our investigator didn't uphold the complaint. He said although Mr H said he provided his phone and details to a member of the nightclub for a short period of time, the transactions in question occurred hours apart with one-time passcodes being sent to Mr H's genuine number. He noted transfers were made from his personal account to his business account before being transferred to the third party. So overall our investigator didn't think the pattern of the payments was typical fraudster behaviour. Our investigator also listened to the call when Mr H contacted Santander regarding the payment of £1,800. He concluded Mr H was of sound mind and understood the scam warning Santander read out which also included checking that Mr H wasn't under duress.

Mr H didn't agree with our investigator. He said he didn't have his glasses and re-iterated he was under duress in the nightclub. He also said the transactions should have triggered Santander's system.

I reviewed this complaint and on 9 February I issued a provisional decision, an extract of which I've included below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Mr H has provided a lot of information and it's clear that this was an eventful time for him. I will never know for certain what happened so my role here is to weigh up all of the evidence provided by both Mr H and Santander to decide what I think is more likely than not to have happened."

Mr H has put forwards lots of points for our service to consider. Although I haven't commented on every single point that Mr H has told our service, I have considered these before reaching my provisional findings.

The relevant regulations I need to consider in Mr H's complaint are the Payment Services Regulations 2017. These say that generally a consumer won't be held liable for any transactions made on their account that they didn't authorise, except in limited circumstances. In this case the most important question I need to answer is whether I think it's more likely than not Mr H, or someone acting on his behalf, carried out the transactions.

The transaction from Mr H's personal account

Having looked at the electronic records of the transactions I can see a transaction of £1,800 was attempted but declined. Mr H has confirmed that it was him who had initially attempted to make this transaction.

Mr H spoke to Santander over the phone in order to ensure that it was successful. Both he and our service are in receipt of this call recording and Mr H does not dispute being the person on the call.

Having listened to the phone call, I can see that Mr H wanted the payment to be made and explains he has spent a lot of money and he'd like to pay what he owes. So I think Mr H authorised this transaction himself.

During the phone call Mr H answered all the necessary questions asked by Santander. The call handler read out a warning to check this wasn't a scam and that Mr H wasn't under duress. Mr H has said he provided some flags by saying "get me out of trouble" and when he was asked whether it was a scam he said "yes...no, no".

But having listened to this call, Mr H says "yes...no, no, it's all good" and when he referred to getting out of trouble, this was mentioned in a light-hearted way and no further information about that was provided by Mr H. Taking the whole call into account, I don't think Mr H's comments would have been enough to flag with Santander that he was under duress. Furthermore, he sounded fairly relaxed and told the call handler how much he was enjoying his time abroad. So I don't think there was anything in the call that would have made Santander be on notice that something untoward was going on.

Mr H appeared to be coherent in the call and given that he answered all the questions correctly and confirmed he agreed to the payment I don't think Santander did anything wrong in processing it.

I understand Mr H feels it wasn't sufficient for Santander to ask if he was under duress as he wouldn't have been able to confirm this in the call. Although I take on board his point, I would have expected Mr H to raise this with Santander immediately afterwards and once he knew he was safe. However, based on what Mr H told us on his complaint form it sounds like he continued to enjoy the company of the people that he had befriended after the transaction of £1,800 had occurred, and after he'd left the club he says he was at. And Santander's internal records show the following disputed transactions that took place were hours apart.

I find it hard to understand that Mr H chose to remain in the company of the group he had befriended rather than report being under duress as a matter of urgency to Santander – or the police. So I'm not persuaded by this version of events.

When Mr H initially reported the fraud to Santander he said he'd authorised this particular payment but it shouldn't have been as much as it was. But as I've explained above Mr H

authorised the payment over the phone. And having listened to the call when Mr H authorised the payment, part of this involved confirming the value of the transaction which Mr H agreed to. So I still don't think Santander should be held liable for it.

I've also noticed during this call Mr H briefly referred to his credit card was not working and elsewhere he's said his credit card had been blocked so he'd been unable to use it whilst abroad. But having looked at the internal notes provided by Santander they seem to suggest the credit card was not blocked which if correct, would call into question Mr H's version of events further. It would be useful if Santander could provide evidence to support whether Mr H's credit card was blocked during this period.

The disputed transactions from Mr H's business account

Turning to Mr H's business account, I can see there were transactions of £900, £2,000, £4,000 and £11,000 which debited Mr H's business account to the third party in question. Having looked at Santander's electronic records of the transactions, I can see that the first payment to be authorised was for £900. Mr H has said he spoke to Santander in the early hours of 27 March and asked for Santander's assistance to get his card working. It seems at this point two new devices were registered for the banking app. Santander's records indicate these were completed using a one-time passcode which was sent to Mr H's registered mobile number – and this also matches the one we hold for him.

Santander's records shows the transaction of £900 was carried out on one of the newly registered devices. Mr H has confirmed he was aware at the time that a new banking app had been installed and he's told us that a third party was helping him because he was without his glasses and couldn't read such small print.

So it seems Mr H allowed the third party to have access to the one time passcode and his online banking, both of which enabled the transaction to take place. It follows that I don't think Santander should refund this transaction.

Mr H has said the £900 had been transferred to the third party as she said this is what Mr H owed her based on drinks that had been purchased at the club. So it does seem there may have been some sort of arrangement between Mr H and the third party at the time of the event for this transaction– although I appreciate this is not Mr H's stance now. The following disputed transactions were also carried out on the new devices that had been registered, which Mr H says he was aware of. All of these transactions were authenticated using one time passcodes that were issued to Mr H's mobile phone. I think it's likely Mr H allowed the third party access to the one time passcode as it seems this is what had been happening during this period.

I've also looked through the whatsapp messages Mr H has provided to us between himself and the third party. Amongst other things, I can see Mr H says "You took much more than I thought from me and that was your decision not mine" so it does seem Mr H was aware payments were being taken from his account and had consented to this at the time, even if perhaps he didn't realise the amounts involved.

Based on Mr H's recollection of events around the time it happened, it seems to me that Mr H may have authorised these or allowed the third party to carry out the transactions and this is more of a dispute between him and the third party so, I don't think Santander should be held responsible. There's nothing to suggest the payments were unauthorised and so Mr H is responsible for them under the PSRs.

Even if I am wrong that Mr H or someone on his behalf authorised the transactions, I think Mr H has acted with gross negligence. Our service would consider gross negligence to be a

lack of care that goes significantly beyond what we would expect from a reasonable person. And I think here Mr H has done so because he seems to have willingly given his security details and the one time passcodes to a third party which has allowed the transactions to take place. So it still remains that I don't think Santander needs to refund the transactions to Mr H.

As our investigator explained, the pattern of the transactions seems unusual if they were all unauthorised. I say this because there were various transfers that were made from Mr H's personal account to his business account. And further transfers were then seemingly sent to a third party who Mr H appeared to be familiar with. I find it unusual that a fraudster would go to this level of effort, rather than transferring funds straight out of Mr H's account(s) to their own.

Furthermore, the transactions in question were spaced out over several hours which I also find unusual. I say this because usually a fraudster would try to take as much money upfront so they can gain as much of the funds quickly before the fraud is reported.
Mr H's complaint points

As I explained at the start of my decision Mr H has put forward numerous points for our service to consider. I'd like to reassure Mr H I have looked at these, although I have not addressed each point individually in my decision.

Mr H says his drink may have been spiked but there is no evidence of this – for example he hasn't explained that he had blacked out, lost consciousness or felt unwell. In fact, Mr H has provided lots of details about the events that took place around this time. So I don't think this changes the outcome of his complaint as it stands.

Mr H believes that the payments should have triggered Santander's system and therefore they could have prevented the payments from debiting. For the reasons I've explained above, I don't think it was unreasonable for Santander to have processed the transactions given that they had the information they required to authenticate them. In addition to this, Santander had spoken to Mr H that day and he seemed happy with the account activity. But there is no doubt that the spending escalated, and the transactions increased in value as time went on.

I think it is arguable that the transactions should have triggered Santander's system. But even if Santander had contacted Mr H about each of these payments, I think it's more likely than not that he would have authorised these anyway.

I say this because he verbally authorised the payment of £1,800, and it seems at the time there may have been some sort of arrangement between Mr H and the group of people that he was with that he would make these payments. So it follows that I don't think intervention from Santander would have made a difference.

Statements

Mr H is unhappy that Santander wouldn't send his business account statements to the police abroad. Although I understand why Mr H needed them to do so, Santander also has an obligation to protect Mr H and his personal data, so I don't think they did anything wrong by not sending his statements directly to a third party. And it appears Mr H was able to obtain the relevant statements within a relatively quick timeframe, given he was able to provide them to the police by 17 April 2023 at the latest (as evidenced by the emails he's provided). It then seems unlikely any police investigation would have been put at risk.

Conclusion

I don't doubt this has been a difficult time for Mr H. I've read his complaint correspondence and it sounds like he had a very stressful and eventful time whilst abroad. I can also see that he tried desperately to get his money back by contacting the third party, but to little avail. I'm also aware that Mr H has faced some further challenges with his health more recently, which I am sorry to read of.

I understand Mr H will be very disappointed with the outcome of his complaint and I realise the impact this is having on his mental health. However, based on the evidence I have, my provisional decision is that I cannot uphold his complaint”.

Santander didn't respond.

Mr H replied to my decision with a lot of information and further submissions. This also included a timeline of events, credit card statements and two phone recordings. I have summarised what I believe to be the key points Mr H has raised.

- He hasn't lied about anything but says it was more of a case of being 'stupid and ignorant' at the time as he was completely unaware that the group of people he befriended were a threat to him.
- Mr H wanted to provide a further timeline of events. He's said he argued with his girlfriend at the time and a friend and went to a bar where he was befriended (or targeted), no payments were taken at the time. The premises were owned by someone who he transferred money to when he was at the next bar. Mr H then went to another bar where the fraud began.
- He maintains he was under duress to make the payment of £1,800.
- He also says he believes his drink was spiked and that photos were taken of him which he thinks would have been used to blackmail him.
- He couldn't do anything himself without his glasses, and he made Santander aware of this.
- He was aware online banking had been downloaded on his phone but was unaware any other device had also been used. Although the third party had his phone, he thought she was answering text messages, but now he suspects she was looking at the one time passcodes.
- He was unaware of the payment of £900 until the third party referred to this in a call with Santander.
- He's questioned why he would transfer funds between his accounts and what would be the purpose of him handing over the money to the people that he befriended.
- He clarified his credit card hadn't been blocked but it didn't work because he had insufficient funds. Santander didn't assist him, so he was left without any money whilst abroad and trying to get home.
- Whilst Mr H was talking to one of the people he befriended, she explained she was unwell. This struck a chord with Mr H because one of his family members had sadly passed away from something similar. Because Mr H felt sorry for the person he'd befriended who was very unwell, he gave her the chance to pay back the money.
- Mr H asked me to look at the whatsapp message he sent to the third party which said "ok you have stolen £17,000.00 from my accounts using my phone". He says this shows he was not involved in the transactions that took place.
- Mr H remains unhappy Santander would not deal directly with the police abroad.
- He also thinks his funds should have been frozen by Santander.

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.

Although I haven't commented on every point that Mr H has raised, I have considered these before reaching my final decision. I have only addressed the points I deem to be most pertinent to the complaint.

Mr H has said he argued with his girlfriend at the time, and a friend and went to a bar where he was befriended (although he says he was targeted) by a group of individuals. As I understood it Mr H got into a fight at the club his girlfriend worked which is where he'd lost his glasses, and he left. Mr H has explained the premises of that club were owned by someone who he transferred money to when he was at the next bar. It seems unusual to me that funds would be transferred *after* leaving this venue. However, regardless of where Mr H was when the payment of £1,800 was authorised, having listened to the call, I'm satisfied Santander acted reasonably.

Mr H has said it was at the next bar when the fraud began. Mr H says was aware online banking had been downloaded on his phone but was unaware any other device had also been used. He's said the third party had his phone and he thought she was answering text messages, but now he suspects she was looking at the onetime passcodes. He's also said he was unaware of the payment of £900 until the third party referred to this in a call with Santander on 27 March, and that it didn't initially register with him what she said. However, the fact remains that Mr H gave this person his phone which enabled online banking to be set up on a second device and for the subsequent transactions to take place. Furthermore, Mr H was aware of the transaction for £900 and didn't take steps to prevent further fraud from happening.

Mr H would like me to reconsider that he couldn't do anything himself without his glasses and that he had to ask someone for help because he couldn't read small print, which Santander were made aware of during one of the phone calls. However, I don't think it would be reasonable to expect Santander to have suspected that the transactions were not being authorised by Mr H purely because of this. And Mr H chose to allow this person access to his phone which allowed the transactions to be carried out so I still don't think Santander should be held liable for the transactions Mr H is disputing.

Mr H believes his drink may have been spiked as he felt unwell the next day, and that photos were taken of him which he thinks would have been used to blackmail him. For the reasons outlined in my provisional decision, I haven't seen any evidence of his drink being spiked. Mr H seems very unsure of this, and his account of events has appeared to be quite detailed and consistent. It doesn't seem as though Mr H has ever suggested that he had absolutely no idea what was happening at any point of the night. And if he did make the payments whilst under the influence, the position on authorisation would still be the same.

Although Mr H believes photos were taken of him with the intention of blackmail, my understanding is that this hasn't actually happened, and it wouldn't change the position on authorisation in any case.

Mr H has questioned why he would transfer funds between his accounts and what would be the purpose of him handing over the money to the people that he befriended. I will never know for certain who transferred money between his accounts and it's not for me to determine the purpose, but I'm satisfied it's more likely than not it was either Mr H or someone acting on his behalf. As I outlined in my provisional decision it seems one transaction was in relation to Mr H's time spent in the nightclub which he authorised himself verbally. Although I accept Mr H may not have 'handed money over' to the group of people he befriended and that he didn't realise they were a threat to him, he allowed the remaining transactions to take place as they had access to his phone and online banking.

In my provisional decision I referred to a message Mr H sent which said “You took much more than I thought from me and that was your decision not mine”. Mr H accepts this but has also asked me to consider his opening message which said “ok you have stolen £17,000.00 from my accounts using my phone”. He says this also shows he wasn’t involved in the transactions. But as I’ve explained I think Mr H allowed the third party to have access to his phone. Even if he didn’t realise the value of the transactions taking place it does seem he was aware payments were being taken from his account, and confronted the third party about this later on.

Mr H said he could relate to one of the people he befriended as she was unwell and that he’d sadly had a family bereavement for the same illness. It seems partly for this reason Mr H gave her the opportunity to repay the funds to him. Although I can understand why Mr H had empathy, as the account holder it would be his responsibility to inform Santander as soon as possible of any untoward activity. But here, Mr H seemed to be aware of what was happening and instead of acting upon this straight away, remained in the company of the people he had befriended who had carried out the transactions.

Mr H thinks his funds should have been frozen by Santander which would have prevented some of the transactions from taking place. But as I explained in my provisional decision, Santander had the information needed to authenticate the transactions and they appeared to be properly authorised by him. So I don’t think it’s unreasonable they debited his account. Furthermore, they had spoken to Mr H that day and he seemed happy with the account activity so I don’t think Santander had any cause for concern.

Mr H says he would not have authorised any transactions after the one he made verbally, but there seems to have been some sort of arrangement between Mr H and the group of people that he befriended in allowing the transactions to take place – although I appreciate that is not Mr H’s stance on the complaint now. So although it’s arguable Santander could have intervened, I think Mr H would have likely authorised the further transactions in any event.

In my provisional decision I explained Mr H had said his card had been blocked but Santander’s records didn’t seem to support that and therefore this called into question Mr H’s version of events. Mr H has now clarified he only used this term as a layman and meant that his card wasn’t working because he had insufficient funds, I’d like to thank Mr H for clarifying this. And having listened to the calls between Mr H and Santander I can see that Santander explained he had insufficient funds in his credit card account, so it does seem his card wasn’t working for this reason rather than the card being blocked. This is no longer something in dispute so this specific point doesn’t impact the credibility of Mr H’s testimony.

Mr H remains unhappy Santander would not deal directly with the police abroad and provide them with his statements. However, Santander is obliged to protect Mr H’s personal data so I don’t think they did anything wrong here - although I appreciate Mr H would have liked to provide this evidence to the police sooner than he did.

In conclusion, I do not uphold this complaint. I am sorry to read of Mr H’s serious ill health both physically and mentally. I appreciate my decision will come as a disappointment but for the reasons I’ve explained I do not uphold this complaint.

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 Mr H on behalf of

P to accept or reject my decision before 24 April 2024.

Marie Camenzuli
Ombudsman