

## **The complaint**

Mr D complains that Santander UK Plc is holding him liable for a credit card account which he says he neither applied for nor knew about; and that it's holding him liable for transactions on the credit card 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, in 2013 a credit card was taken out with Santander in Mr D's name. Mr D subsequently got in touch with Santander to let it know he hadn't applied for the credit card, and that his estranged wife had made unauthorised transactions on the 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've recently sent Mr D and Santander my decision explaining why I can only address part of this complaint – I've explained why we cannot look into Mr D's complaint about Santander holding him liable for a credit card he says he neither applied for nor knew about, or about unauthorised transactions on the credit card before 15 November 2016; but that we can look into Mr D's complaint about unauthorised transactions on the credit card on and after 15 November 2016.

This decision therefore concerns only Mr D's complaint about unauthorised transactions on the credit card on and after 15 November 2016. And I already emailed Mr D and Santander on 4 March 2024 explaining why I wasn't minded to uphold this complaint. 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 previously explained, and for the same reasons. I appreciate since this time Mr D has said that he *did* have a Santander credit card but he cut it up so he questions how further transactions were made. And he's said that he wants Santander to prove that it was him who carried out these transactions, and 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 have previously explained

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 charge 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 said he didn't know about this credit card in his name and his estranged wife intercepted post regularly (indicating she obtained the credit card and PIN without his authorisation). But I'm not sufficiently persuaded by this. The credit card was opened in August 2013 at the same time as Mr D's sole account, so it seems unlikely to me that he wouldn't have known about it. I appreciate Mr D has since said he cut up his credit card, so it must have been re-issued and intercepted by his wife.

But as I've explained in the decision I've issued concurrently with this one about Mr D's Santander sole current account, 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. So, with regards to Mr D's Santander sole account, I've decided that it's most likely Mr D gave his estranged wife access to make payments.

Mr D's submissions indicate to me his recollections about things aren't completely clear, but he just feels adamant now his estranged wife acted fraudulently. And I think the most likely explanation here is that the same happened with this credit card, it's just that Mr D may not remember now, and is generally unhappy with how he thinks his estranged wife made more payments than he would have approved of. So, in terms of these credit card transactions, I think it's most likely these would have been authorised by *apparent consent*, in the same way as I described with regards to the sole account payments. So, I think it's most likely therefore that any credit card 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 (even if he's forgotten now).

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 the payments at the time.

I understand Mr D's position is that he did not give his estranged wife *actual* authority to make any transactions on this credit card. However, as I've explained, I'm not persuaded by this. 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 that he also wasn't aware of this credit card), 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**