

The complaint

Mr S is unhappy that Santander UK Plc won't refunded him for transactions which he doesn't recognise amounting to around £500 on his credit card account.

What happened

In December 2022, Mr S contacted Santander to report a number of transactions to a merchant which he hadn't made or authorised. There were approximately eight transactions totalling to around £500. The merchant is an online retailer and marketplace facilitating payments for individual retailers.

Mr S explained that he'd received unsolicited packages from the merchant which don't appear on his account with them. He confirmed he didn't place the orders and reported it to the merchant. Mr S also confirmed he didn't authorise a friend or family member to use his card.

On the same call, Mr S also reported a transaction which he had authorised for £67.17 a few days prior to the disputed transactions but hadn't received the goods. He explained he'd tried chasing it up but each time he's told the order is being processed. However, the timescale of when the order was expected of seven days had passed. He explained he was suspicious of this retailer possibly being a scam site, as the goods were priced really low, the order wasn't received and there were negative reviews on the website which he'd checked on since.

Santander arranged to send Mr S a new credit card and told him they'd review his claim. They tried contacting Mr S to discuss the claim but weren't successful. So, they declined the claim. They said that they couldn't refund Mr S because the IP address used to facilitate the disputed activity had been used by Mr S for genuine activity previously. They said it also required additional authentication and was authorised using Mr S's mobile banking app. They said Mr S had a prior relationship with the merchant involved so he should get the matter resolved with them directly.

Unhappy with this, Mr S referred his complaint to our service. We asked Santander to look into the complaint and provide their final response letter within eight weeks. Santander gave Mr S their final response letter. They explained they were unable to raise a chargeback for the authorised transaction of £67.16 due to the time that had passed. So they made a decision to refund this payment. But their position on the disputed transactions remained that Mr S would need to resolve the matter with the merchant directly.

Mr S asked us to investigate as he said the disputed transactions weren't authorised and doesn't believe that the merchant had an obligation to refund him. Santander provided us with their business file, but our investigator asked them to provide some further information to help with his investigation.

Santander didn't respond within the deadlines given. So, our investigator reviewed the case based on the information we had received from both parties. He thought that Santander hadn't met their obligations under the regulations to evidence that the disputed transactions

had been authorised. He asked Santander to rework Mr S's credit card account as if the disputed transactions never took place.

Mr S didn't respond to our investigator. Santander believed they'd already provided the information the investigator had asked for in their original file submissions. They asked the investigator to confirm if he'd reviewed this information or to let them know if we'd not received all the information requested and confirm what was missing.

Our investigator shared his emails with Santander which set out the information he'd requested that we hadn't yet received. He gave Santander a new deadline to respond by. Santander haven't responded with the further information, nor have they confirmed their acceptance of the recommendations made by the investigator. Since no agreement has been reached, the case has been passed to me for a decision.

My provisional decision

I issued a provisional decision on 15 March 2024, and made the following findings:

"The regulations relevant to Mr S's complaint are the Payment Services Regulations 2017 and the Consumer Credit Act 1974 as the disputed transactions were made on a credit card.

In summary, Mr S can't be held liable for transactions he didn't make or allow someone else to make on his behalf. Mr S has told us he received the goods which he didn't order, and the packaging had his name. This means the fraudster would've required Mr S's name, address and full credit card details to carry out the disputed transactions.

Given that Mr S made a transaction on a website a few days prior the disputed transactions, which he later reported to Santander as a scam site where he'd provided his name, address and card details, I think there's a plausible explanation for how his card details and personal information could've been compromised. In any event, it's possible for this type of information to be compromised, for example through data linked to other transactions Mr S authorised leading up the disputed transactions.

The onus is on Santander to show that Mr S carried out the disputed transactions. Although I only have limited information, I can see Santander's investigation notes state that the IP address and device used for genuine activity was the same only for the transaction Mr S had authorised of £67.17. Given that Mr S had already told Santander he authorised this transaction, it's not surprising to see that the IP address and device used to complete this transaction was his own.

Santander's investigation notes make it clear that the disputed transactions were made on a device which Mr S hadn't used previously for genuine activity. The device status was recorded as 'new'. They were unable to obtain any information relating to the IP address, device or increased authority and stated that the merchant was 'non secure'. They'd also noted that they were unable to contact the merchant to confirm details.

All of this supports Mr S's testimony that he didn't make or authorise the disputed transactions. I appreciate Mr S has received the goods which on the face of it doesn't appear to follow the usual pattern of fraud, but I can see on the merchant's website that there are some known scams, such as 'brushing' where personal and financial information are illicitly obtained to carry out the scam.

The information we've been provided shows the reason Santander declined Mr S's claim on the basis that he has an existing relationship with the merchant and asked him to resolve the matter with them directly. Mr S has provided us with evidence of all the genuine transactions he's carried out on the merchant's account, and these don't include the transactions he's disputed. He's also told us he's reported the matter to the merchant, and he was told he didn't need to return the goods but was asked to dispose them instead. Mr S has still retained these items and has offered for these to be collected.

I don't think Mr S having an existing relationship with the merchant absolves Santander from their responsibilities under the regulations stated above. They can only hold Mr S liable for the transactions if they can demonstrate that he either made or allowed someone else to make the transactions.

Based on the information I've seen, I can't fairly agree that Santander have shown that Mr S made or allowed someone else to make the transactions. It follows that Santander can't hold Mr S liable for the disputed transactions and should refund him.

I don't think Santander have treated Mr S fairly when they declined his claim for the transaction he had authorised. I think they should've done more to investigate this either as a scam or raise a chargeback which they later identified and refunded him for. Although Santander refunded Mr S the authorised transaction of £67.17, this wasn't until April 2023, which I think was an avoidable delay.

I think the way Santander handled Mr S's claim has caused him unnecessary distress and inconvenience. I can understand why he feels like he wasn't taken seriously. He's explained this has added to his mental health issues. Taking this into account, I think Santander should pay Mr S £100 compensation in recognition of the distress and inconvenience Mr S was caused.

Putting things right

Since I don't think Santander can hold Mr S liable for the disputed transactions, they should refund them. They should also rework the credit card account to remove any related interest, fees or charges.

As explained, I think Santander caused delays in refunding the authorised transaction of £67.17. So, they should rework the credit card account to remove any related interest, fees or charges on this transaction also.

It's unclear if Mr S has been clearing his full outstanding balance on his credit card each month. The account movements we've been provided seems to indicate that he does as I can see he made a payment of £1,233.84 on 20 January 2023.

If that's the case, then Mr S has been without his funds for a considerable time and has lost the opportunity to use them for other purposes. So Santander should add 8% simple interest per annum on the disputed transactions refund from 20 January 2023 (the date Mr S made a payment towards his credit card following the disputed transactions) to the date of settlement.

Santander should also add 8% simple interest per annum on the authorised transaction of £67.17 also from 20 January 2023 (the date Mr S made a payment towards his credit card following the disputed transactions) to the date when the refund was provided.

Santander should pay Mr S £100 compensation for the distress and inconvenience caused to him.

Responses to my provisional decision

I asked both parties to respond to my provisional decision and provide further evidence of arguments they want me to consider.

Mr S confirmed he had nothing to add. Santander sent information for me to consider. In summary, they explained that their notes confirmed that the same IP address was used previously for genuine online banking activity. They said that the card payments were to a merchant that Mr S had an existing relationship with so further authorisation of the payments weren't required. They believe that Mr S should raise the dispute directly with the merchant and asked us to confirm if this had been done.

Our investigator wrote to Santander to explain that I'd looked at the information they'd provided but my provisional decision hadn't changed. They were given a final opportunity to provide any further information or evidence before I made a final decision.

Santander responded and explained the reason Mr S's claim was declined was due to his existing relationship with the merchant. And as the transaction occurred in 2022, they were unable to confirm without doubt where the fault lies. However, in a bid to resolve the matter, they said they were happy to refund the disputed payments which equated to £579.05 as a gesture of goodwill.

They didn't feel interest or compensation were warranted as they'd referred Mr S to the merchant in their final response letter of 7 April 2023. They said they advised Mr S that the matter would need to be resolved directly with the merchant. However, Mr S never contacted them again which meant they didn't have an opportunity to review the payments again before he raised the complaint with our service. They also said that Mr S cleared the balance in full on the credit card without incurring any additional fees.

Our investigator put Santander's offer forward to Mr S. However, Mr S declined this and was only happy to accept the outcome I set out in my provisional 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.

Having done so, I haven't been provided with any new evidence or points from either party which have persuaded me to change my mind and deviate from the outcome I explained in my provisional decision. I'll explain why.

As explained in my provisional decision, Santander's investigation notes stated that the IP address and device used for genuine activity was the same for the transaction Mr S had authorised of £67.17 and not for the disputed transactions. Since Mr S had authorised the transaction of £67.17, it isn't unexpected that the IP address and device used to make this transaction was his own.

I remain satisfied from Santander's investigation notes that the disputed transactions were made on a device which Mr S hadn't previously used for genuine activity. They'd also noted that they weren't able to obtain any information relation to the IP address or device and that they were unable to contact the merchant to confirm details.

Santander haven't supplied me with any new information or evidence to the contrary which shows that Mr S either made or allowed someone else to make the transactions. So, I'm satisfied that Santander can't fairly hold Mr S liable for the disputed transactions and should therefore refund him.

I've thought about Santander's reasoning for not agreeing to pay the compensation or interest element of my award. However, this hasn't persuaded me to change my mind. I've listened to the call that Mr S had made to Santander, and he'd made it clear to them that he'd already contacted the merchant.

Whilst I appreciate Mr S didn't go back to Santander or the merchant following their final response letter, he simply didn't have to do so. Firstly, because Santander didn't ask him in their final response letter, to get back in touch with them after contacting the merchant and secondly and most importantly, Santander had made it clear that they'd decided to decline his claim as he had an existing relationship with the merchant. They told him to contact our service if he wasn't in agreement with their decision.

I remain of the view Mr S has been caused unnecessary distress and inconvenience in the way they handled his claim and should pay £100 compensation to recognise the impact on him.

Santander have confirmed that Mr S cleared the credit card balance in full so there aren't any interest, fees and charges to refund. However, Mr S has been without his funds for a considerable time and has lost the opportunity to use them for other purposes. So, I'm still of the view that Santander should add 8% simple interest per annum on the disputed transactions refund from 20 January 2023 to the date of settlement as well as 8% simple interest per annum on the refund of £67.17 also from 20 January 2023 until the date this refund was provided.

Putting things right

In summary, to put things right, Santander should:

- Refund the disputed transactions.
- Add 8% simple interest* per annum to the refund amount from 20 January 2023 to the date of settlement.
- Add 8% simple interest* per annum on £67.17 from 20 January 2023 until the date the refund was given to Mr S.
- Pay £100 compensation.

* If Santander considers that they're required by HM Revenue & Customs to deduct income tax from the interest, they should tell Mr S how much they've taken off. They should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons explained, my final decision is that Santander UK Plc should put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 21 May 2024.

Ash Weedon
Ombudsman