

The complaint

Miss M complains that Santander UK Plc ("Santander") failed to refund transactions she didn't recognise.

What happened

Miss M noticed her card had been used by her (at the time) partner to make a number of transactions to a betting company I'll refer to as P. Miss M reported this to Santander and confirmed she hadn't given permission for her card to be used to make these payments. She said her card was kept out of sight in her bag which was kept in the kitchen.

At the time the disputed transactions took place, Miss M had gone upstairs, leaving her card and phone in her bag. A number of transactions were made overnight totalling over £700.

Miss M asked Santander for a refund because she hadn't given permission for her account to be used. Santander advised Miss M they were registering the issue as a fraud claim and she was under the impression she would obtain a refund. Miss M also raised a complaint with Santander for their handling of the situation. Santander later told Miss M they'd given her incorrect information and they considered the matter a civil dispute and advised Miss M to contact the police. Santander offered £100 to Miss M for the incorrect information and declined her request for a refund.

Miss M then brought her complaint to the Financial Ombudsman Service for an independent review where it was assigned to an investigator to look into. Both parties were asked to provide details of what happened, and Miss M confirmed her version of events, summarised as:

- She became aware of the use of her card early the same morning it happened.
- Her card was back in her purse when she looked for it.
- She didn't give anyone (including her partner) permission to use it.
- Miss M said the pattern of payments is out of the ordinary for her.
- She was disappointed that she didn't receive alerts relating to the payments.

Santander provided details of the payments and their investigation, which in summary was that:

- The payments used Miss M's genuine card.
- Some of the transactions utilised an additional (3DS) security step.
- Consistent IP address data was recorded.
- There were no earlier payments to P.

After reviewing the evidence, the investigator concluded that Miss M hadn't authorised the transactions and she should receive a refund, including any charges or fees resulting from these payments and to include interest at 8% simple per annum.

Santander disagreed and commented:

- They maintained it was a civil matter, but if Miss M reported it to the police, they would investigate it again. Miss M was unwilling to report the matter.
- Santander accepted the transactions were out of the ordinary.
- Santander went on to say "... *calls listened to show that the customer said she was asleep and her ex-partner must have found her card and used it for the transactions which means that although she hid the card from her ex-partner, he obviously knew her details therefore information has been divulged to the ex-partner which goes against the account terms and conditions.*"
- The matter should never have been raised as fraud.
- They believed they were authorised because Miss M had divulged information to her ex-partner.
- Calls (which haven't been provided) show Miss M had previously divulged her information to her ex-partner and even though she hid her card, he was still able to find it.

As no agreement could be reached, the complaint has now been passed to me for a decision. As part of my own investigation, I asked Miss M for more details about the arrangements for her account (and phone security).

She said:

- she was with her partner for about 17 years.
- He had a gambling problem, and his own accounts were restricted.
- Miss M had access to his account to prevent gambling transactions.
- Miss M thought at one point he may have had access to her account.
- Miss M later said her partner didn't have the Santander app on his phone or have permission to use her account.
- Her partner denied using any device to confirm 3DS transactions.

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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Santander can hold Miss M liable for the disputed payments if the evidence suggests that it's more likely than not that she made them or authorised them, but Santander cannot say that the use of the card details for online payments proves that the payments were authorised.

Unless Santander can show that consent has been given, it has no authority to make the payment or to debit Miss M's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Miss M.

It's not my role to say exactly what happened, but to decide whether Santander can reasonably hold Miss M liable for these transactions or not. In doing so, I'll be considering what is most likely on a balance of probabilities.

The argument here seems to be around whether Santander can refuse a refund based on the relationship between Miss M and her ex-partner. They seem to be saying that because they were in a relationship, any payments made by her ex-partner are authorised and a

matter for the police. They've described the issue as a "civil matter". Santander have argued that Miss M revealed her "information" to her ex-partner, so anything further is authorised.

The payments disputed by Miss M are, as outlined above, governed by the PSRs. They are either authorised or they are not. I thought that Santander's approach here was unhelpful when they told Miss M they weren't dealing with this as fraud, despite what Miss M was telling them. It's apparent from her testimony that she kept her card separate from anyone else, she hadn't given her ex-partner permission to use her card and it had been returned back into her purse after its use – all the while Miss M was asleep upstairs. I don't think it's unreasonable to conclude that these are the actions of someone using the card without permission and hoping to keep that use from being found out by Miss M for as long as possible.

Santander argue that Miss M said she'd given her ex-partner the "information" (which I'm presuming they mean are payment details) and as such any use by him would therefore be authorised. This is often referred to as "apparent authority" and is a way for a third party (often an informal arrangement) to be able to use a card, but it makes the holder responsible for their use, even if that use is outside of the expectation of the card holder. So, if Miss M had given her ex-partner permission to use the card at some point, she could be held responsible for his later use, but that only extends so far.

I think it's likely that her partner did have some form of permission at some earlier point in the relationship but given the problem he appears to have had with gambling, it seems unlikely that Miss M would have continued to extend that permission. Particularly when Miss M has said she controlled his accounts to prevent him from using them to gamble, so it seems unlikely she would allow him access to her own funds at the same time.

Some of the payments required additional security called 3DS. This step can be done a number of ways. Santander's data shows the device used to confirm the payment as "unknown". Given the extent of the relationship and likely previous account access, it's not surprising that this extra step could have been completed by Miss M's partner. Miss M had commented that she wasn't provided with any notifications about the payments by Santander. The 3DS evidence does show some notice was provided, but it appears it was no longer visible to her after the transactions were made.

I noted that Santander thought the IP address data supported their assertion that it was Miss M who was responsible. This data corresponds to a "location" of the device used to access the services. Given Miss M has said it was her partner, it's not surprising this data matched her own (legitimate) use of her account as it took place in their home so, I haven't given this particular piece of evidence much weight.

On balance, the evidence points to her ex-partner using her card without permission whilst Miss M was asleep and returned it to her purse without telling her. So, it's hard to argue that was in the spirit of any previous authority. These seem to me to be the actions of a person who hasn't got permission to use the card and therefore would be considered unauthorised. I also don't agree with Santander's assertion that Miss M was in breach of her terms because she divulged her details after hiding her card. It seems to me to be unreasonable to say someone hid their card, but this could somehow be considered as giving permission to use it.

Overall, I don't think there's sufficient evidence to show Miss M authorised these payments herself or had any other form of permission in place to allow her account to be used, so I think it's more likely than not that these transactions were unauthorised and it's both fair and reasonable for Santander to refund Miss M.

Santander have offered (and may already have paid) £100 for their handling of her claim, so I won't be asking them to do anything further here. That's because I think the payment was a reasonable way for them to recognise the way they dealt with Miss M and the impact this had on her.

Putting things right

In order to finalise the complaint, Santander should now refund those transactions disputed by Miss M, amounting to £700 (including the £20 credit received from P), ensuring the account is put back into its position prior to these payments and adding simple interest at 8% per annum for the loss of the use of the funds from the date of transaction to the date of refund.

My final decision

My final decision is that I uphold this complaint against Santander UK Plc and they're instructed to settle it as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 28 October 2024.

David Perry
Ombudsman