

The complaint

Mr I complains that Santander UK Plc ('Santander') is holding him responsible for transactions he says he didn't make or otherwise authorise.

What happened

Mr I says that in October 2022 he was on a business trip abroad and got separated from his colleagues. Someone advised Mr I that his colleagues were in a bar, so he went and sat at a table in the bar while he waited for his friends. Mr I says that while in the bar he ordered drinks on a credit card he has with another provider and was required to enter his PIN. He believes that people around saw his PIN. His recollection is hazy though as he says he was drugged, and his Santander debit card and his credit card for another provider were stolen and transactions made he was unaware of. The PIN for his Santander debit card and other credit card account was the same. His other credit card was blocked after three transactions and his Santander card was also blocked after three transactions were made to the same payee for £669.58, £719.20 and £726.21. Mr I says all transactions were verified on his mobile which is activated using his fingerprint.

When Mr I returned to his hotel, he found that his cards were missing. He checked his online banking and noticed the disputed transactions so contacted Santander to report them and the loss of his card.

Santander has held Mr I responsible for the disputed transactions. It says that Chip and PIN was used to complete the transactions on Mr I's registered mobile device and that when the first transaction was made it sent a message to the same device and received a response confirming the activity was genuine.

Mr I was unhappy with Santander's response and brought a complaint to this service. He says that when he reported what had happened to Santander the three transactions were pending so Santander should have stopped them or been able to recover them immediately. He is also unhappy that Santander hasn't investigated the company that received his funds and because Santander has said it won't raise a dispute about the transactions because he doesn't have a receipt. Mr I also says that the service he received from Santander was poor, he spent lengthy periods of time on hold and was only told after he returned to the UK that he should have reported the matter to the police abroad and gone to hospital.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said the disputed transactions were made using Mr I's genuine card and PIN, and there was no evidence of a payment on his credit card with another provider just before the disputed transactions. This meant there was no evidence to explain how Mr I's security details could have been compromised. Also, a message was sent to Mr I's registered mobile device to verify one of the payments and Santander received a response to confirm the payment was genuine. And, as the payments had been authorised, Santander couldn't have cancelled them.

Mr I was unhappy with the investigator's findings and asked for a final decision, so his complaint was passed to me to consider. I've summarised his main complaint points below:

- He bought a drink on his credit card with the same PIN, and this must be how his PIN was obtained after he'd been drugged. His credit card provider decided that he was not at fault for transactions to the same payee and provided him with a refund.
- His phone can be unlocked using his fingerprint so someone else could have completed the transactions and verified the payment Santander sent a message about.
- Santander was fined for money laundering after the transactions were made so he should be recognised as a victim of financial crime and compensated by Santander or a compensation scheme.
- Mr I asked what Santander has done about blocking the payee and its involvement in crime.
- Santander refused to raise a dispute on the basis that goods weren't received.

After reviewing this complaint, I asked Santander to reimburse Mr I. It didn't agree so I issued a provisional decision on 14 May 2024. In the *"What I've provisionally decided – and why"* section of my provisional decision I said:

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

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take in account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

The relevant law here is the Payment Services Regulations 2017. Broadly speaking Mr I is responsible for any payments that he has authorised (either by making them himself or allowing someone else to) and he isn't responsible for unauthorised payments except in more limited circumstances. I should also say that if Mr I entered his PIN while drugged he would still be responsible for the transactions.

I have seen evidence which confirms that the transactions were made using Mr I's PIN. So, the crucial point here is how a third party could have known Mr I's PIN in the circumstances he has described. The last transaction on Mr I's Santander account (before the disputed transactions) was a few days before. But Mr I says that he bought drinks in the bar where the disputed transactions took place using his credit card with another provider and someone saw him entering his PIN. The initial evidence Mr I provided to this service from his credit card provider didn't show a genuine transaction where Mr I's PIN could have been compromised. This service has made contact with Mr I's credit card provider and obtained additional evidence which has helped me to make my decision.

The evidence shows that a low value transaction was made using Mr I's credit card (with the same PIN as his Santander card) at 21:46 on 11 October 2022. Two subsequent payments at 22:07 and 22:36 were made but refunded by Mr I's credit card provider as unauthorised transactions. Further attempts were made to use Mr I's credit card with another provider before the transactions were made using his Santander debit card that same evening. These transactions were similarly spaced out (23:08, 23:31 and 00.00).

I'm satisfied that the first transaction on Mr I's credit card was for drinks and that he authorised the payment by entering his PIN. I consider this was the point of compromise and that the transactions Mr I has disputed with Santander weren't authorised by him. There's a clear pattern of transactions that doesn't fit with genuine spending. Mr I also reported the loss of both of his cards (credit and debit) to the other provider and Santander when he

returned to his hotel in the early hours of the following morning suggesting that the cards weren't in his possession.

I am aware that Santander says it sent a text message to Mr I's registered mobile device before the first disputed payment was processed. Santander hasn't provided clear evidence from its records of the exact message sent and the reply given. In a call with Mr I a Santander agent told him that the reply given was "Why". Santander has said its systems wouldn't have accepted an answer other than yes or no but hasn't provided any evidence that it received such a response. This is a finely balanced case so if Santander has additional evidence, it should provide it in response to this provisional decision.

Santander has also said that Mr I's online banking was accessed multiple times in the period after the disputed transactions and has questioned why further funds weren't taken if a third party had access to his online banking. But further attempts were made and were blocked by Santander. This activity is consistent with the actions of a fraudster.

Santander has also said that it's unlikely a fraudster would retain Mr I's cards but not his mobile device (given that it says it received a response from this device before the first transaction was made). Whilst this may be the case, I'm not persuaded it means Mr I authorised the transactions.

Overall, I'm persuaded it's more likely than not that Mr I didn't authorise the three transactions and so Santander should refund them in full together with interest as set out below.

I turn now to some of the points raised by Mr I. He has said Santander should have been able to stop the transactions because they were pending when he reported them. Once a transaction is authorised (which in this case means entering the PIN) it remains pending until the merchant collects it. Under the PSRs Santander is under a duty to allow the merchant to collect the transaction once it had been properly authorised. So, I consider Santander was unable to stop the transactions.

Mr I has said Santander should have sought to recover his loss through a chargeback. The chargeback scheme is voluntary, and banks are not under any formal obligation to submit a chargeback claim. But this service's view is that it is good practice for a bank like Santander to make a chargeback claim where the right exists, timescales are met and there is a reasonable prospect of success. In this case there was no evidence at all, so I don't think there was a reasonable chance of success. Mr I didn't know the name of the bar he went to and had no receipts or other information.

I can only consider the individual circumstances of Mr I's case so will not comment on his points around supporting organised crime and money laundering."

Mr I accepted my provisional decision. After taking into account the evidence from another provider that Mr I made a transaction at the same place using his PIN, and this was the point of compromise, Santander agreed to settle Mr I's claim.

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.

Neither party has raised any new points or asked me to consider any further evidence and both parties accepted my provisional decision, so I see no reason to depart from it.

Briefly, for the reasons set out in my provisional decision (reproduced above) I consider it to be more likely than not that Mr I didn't authorise the three transactions he has disputed with Santander. Santander should refund these transactions and pay interest as set out below.

My final decision

I uphold this complaint and require Santander UK Plc to:

- Refund £2,114.99; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of loss to the date of settlement.

If Santander UK Plc considers that it is required by HM Revenue & Customs to deduct income tax from the interest award it should tell Mr I how much it has taken off. It should also give Mr I a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 3 July 2024.

Jay Hadfield
Ombudsman