

The complaint

Mr and Mrs D have complained that Santander UK Plc won't refund transactions they say they didn't make or otherwise authorise.

What happened

While abroad in 2023, Mr D's wallet was stolen, with his Santander debit and credit card inside. He contacted Santander as soon as he got back to his hotel, but by that point the cards and their PINs had been used for around £1,400 of spending.

Mr and Mrs D have explained that they didn't tell anyone their PINs or record them anywhere. But they explained they'd set those two PINs to Mr D's birthday, which they think the thief may have guessed, as there was ID in the wallet which had his birthday on it. They feel that Santander should have blocked the spending.

Santander held Mr and Mrs D liable for the payments in dispute, on the basis that each PIN was used correctly from the first try.

Our investigator looked into things independently and upheld the complaint, suggesting it was possible that the thief guessed the PINs. Santander appealed, so the complaint's been passed to me to decide.

I sent Mr and Mrs D and Santander a provisional decision on 27 May 2024, to explain why I thought the complaint should be upheld in part. In that decision, I said:

I'm satisfied from Santander's technical evidence that the payments in dispute used Mr D's genuine cards, and the correct PINs. So I can see that these transactions were properly authenticated. The question, then, is whether the evidence suggests that it's most likely Mr and Mrs D consented to the transactions, or not.

Taking into account everything that's been said and provided, I'm not persuaded that Mr and Mrs D consented to the disputed transactions. Mr and Mrs D have provided clear, plausible, and consistent testimony about being robbed, reported the same to the police at the time, and I have no reason to doubt them. I've not found any evidence which shows that they consented to the payments. And with the benefit of hindsight, the disputed payments display a pattern of fraud.

I've then considered whether Santander can hold Mr and Mrs D liable for the disputed payments on the basis of them failing to keep their accounts safe either intentionally or through acting with gross negligence.

The key question here is how the thief might have learned the relevant PINs. The thief entered each PIN correctly from the very first try, which suggests that they knew the PINs somehow. The last time Mr D had used his PIN was two days prior in a different town, so it's not likely or plausible that the thief saw him enter it beforehand. And Mr and Mrs D confirmed they hadn't shared or told anyone the PINs.

Mr and Mrs D say that the PINs were both Mr D's birthday. However, while I can see that the credit card's PIN had been manually changed, the debit card's PIN had not. According to the electronic records, it was just a random number automatically generated by the bank. So the debit card's PIN does not appear to have been Mr D's birthday. And even if it was, it doesn't seem especially likely that a thief would've not only guessed that the PIN was based on a birthday, but would've guessed which specific four digits out of the day, month, and year were relevant, all on the very first try, and on both cards. So in this case, I cannot reasonably conclude that the thief guessed both PINs based on them being Mr D's birthday.

I don't think the transactions were authorised by Mr and Mrs D. And I've not found a likely or plausible way that a thief could've learned the PINs unless they were written down. It follows that I currently think it's most likely that a record of the PINs was kept in the wallet with the cards – even if Mr D does not recall doing so. It may be, for example, that he left a note of the PINs in there by accident.

And in that case, that would mean Mr and Mrs D failed to keep their accounts safe in line with the terms and conditions. It may be that they did this knowingly, or by not taking enough care. But it is widely understood that keeping a note of the PIN with the card is very risky, since anyone who has the card is then able to use it without further checks – which seems to be what happened here. And there's no other plausible conclusion I can reasonably reach given the evidence I have so far.

So I don't think Santander can be held liable for the debit card payments involved. However, for the disputed payments made on the credit card, the rules about negligence or failing to keep one's account safe do not apply. So Santander cannot hold Mr and Mrs D liable for those payments on that basis. It follows that I currently think the credit card payments should be refunded.

Lastly, I appreciate why Mr and Mrs D feel that Santander should've blocked the disputed payments. It's worth keeping in mind that while banks should be on the lookout for fraud, a balance must be struck between responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. The starting position in law is that banks are expected to process payments which a customer asks them to make. And here, it would have looked like their customer was making the payments, given they were made on the genuine cards, with the correct PINs, with no incorrect PIN entries, in the same country where Mr and Mrs D were at the time, with amounts which were not so high as to be of special concern. So I've not found that Santander needed to block these payments. I will also note that Santander did end up blocking a good deal of further spending in any case.

In response to the provisional decision, Santander accepted it. Santander suggested that Mr and Mrs D should set their PIN to something memorable but not guessable, and that Mr and Mrs D should review their PIN security in order to avoid further fraud. Mr and Mrs D replied with some further arguments, which I'll go through below.

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.

Mr and Mrs D insisted that they did change the PIN for the debit card as well as the credit card, and had been using that adjusted PIN. However, I'm afraid the electronic records set out that the credit card's PIN was changed, but the debit card's PIN was not, and the PIN used for their historic debit card payments would've been a randomly generated one.

With that said, even if I were to accept that the debit card PIN was based on Mr D's birthday, as I explained in the provisional decision, it would still be very unlikely for the thief to have made a lucky guess. They would need to have not only guessed that the PIN was based on a birthday, but guessed which specific four digits out of the day, month, and year were relevant, all on the very first try, and on both cards.

Mr and Mrs D reiterated that they wouldn't keep a record of the PIN. But I'm afraid I've not found a more likely explanation for how the thief knew the PIN for both cards. And it's plausible that they may well have since forgotten about keeping such a record.

Mr and Mrs D argued that Santander should have blocked the payments, as there were multiple purchases at the same merchant, and they hadn't made purchases on one of the cards in months. But the merchant was a common government-licensed tobacconist, and I've not found anything about them which should've flagged them as a fraud concern. It's also not that uncommon to withdraw cash while on holiday. Both cards had been used for withdrawals or purchases in the days and weeks before the disputed payments, and spending can and does vary from time to time. As mentioned before, the amounts were not so high as to be of particular concern. The payments were made on the genuine cards, with the correct PINs from the first try. It would have looked like the genuine customer was making them, and Santander was expected to process payments that a customer asks it to make. I've not found sufficient reason to say that Santander needed to have blocked more payments than it already did.

So having reconsidered the case, I've come to the same conclusions as before.

Putting things right

I direct Santander UK Plc to:

- Rework the credit card account to reverse the disputed credit card payments and any related interest and charges.
- If, after reworking the account, it emerges that Mr and Mrs D have made overpayments to pay for the disputed transactions on the credit card, Santander should refund those overpayments, and add 8% simple interest to the overpayments, payable from the date of each overpayment until the date it's refunded. This is to compensate Mr and Mrs D for the time they didn't have that money.

If Santander considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell Mr and Mrs D how much tax it's taken off. It should also give Mr and Mrs D a tax deduction certificate if they ask for one. Mr and Mrs D may be able to reclaim the tax from HMRC if they don't normally pay tax.

- Adjust Mr and Mrs D's credit file entry for their credit card, to reflect what the balance would've been had the credit card's disputed payments never been made.

My final decision

I uphold Mr and Mrs D's complaint in part, and direct Santander UK Plc to put things right in the way I set out above.

If Mr and Mrs D accept the final decision, Santander UK Plc must carry out the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 17 July 2024.

Adam Charles
Ombudsman