

## **The complaint**

Mrs P and Mr P complain that Santander UK Plc (“Santander”) failed to refund transactions they didn’t recognise.

## **What happened**

Mrs P is the principal person involved with this complaint, So I’ll mainly refer to her throughout for ease of reading.

Mrs P, along with other family members were on holiday, staying at a villa some distance from a local town.

During the stay, Mrs P used her card on a number of occasions at different merchants in the town. She later noted some unusual activity with an employee who she thought was operating a camera near the card machine she used to purchase some items.

Several days later, Mrs P noted some unusual activity on her account from a cash withdrawal that had taken place in the town using a stand-alone automated teller machine (ATM).

Mrs P contacted Santander about it and they told her that another withdrawal had taken place earlier that morning. They also said a failed attempt to withdraw a higher amount of cash had occurred just before the successful (reduced) withdrawal took place. The first one was rejected because it was above the daily limit for cash withdrawals for Mrs P’s card.

Mrs P told Santander that she still had her card with her and she hadn’t made either of the two withdrawals. She further stated that no one else had access to the card or was allowed to use it. She didn’t have the personal identification number (PIN) written down and said that the villa they were staying in was some distance (about 30 mins using a mainly unpaved track) to the ATM used that morning. Santander blocked the card and reissued a new one.

Santander looked at the information linked to the two cash withdrawals and told Mrs P that her card and PIN were used to make the withdrawals. Santander declined to make a refund. Mrs P made a complaint to Santander about their decision and reiterated her situation. Santander didn’t change their position, believing that the audit data showed the card’s chip had been read and it used the correct PIN. Santander didn’t think that it was possible, based on the audit data, that Mrs P’s card had been cloned. They were of the opinion that it was Mrs P’s genuine card that had been used and if she still had it with her, it was unlikely to have been an unknown third party that used it.

Mrs P remained unhappy with Santander’s treatment of her situation and brought her complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the issue and asked both parties for information about the incident.

Mrs P confirmed her version of events and was adamant that she hadn’t used her card to make the withdrawals. She said she was aware of other issues with ATM’s in the town she stayed near and thought that her card had been copied (cloned).

Mrs P also said she'd recently experienced a major health issue which she was recovering from and if they'd known how Santander were going to treat them, they would never have reported the loss and changed banks. Mrs P said the implication by Santander was that they were being dishonest by making this claim.

Santander provided audit evidence from their systems. This showed that:

- Three attempts were made to withdraw cash – two of them were successful.
- They took place on two separate days.
- One withdrawal was declined due to it being above the daily withdrawal limit.
- The "Data Terminal Entry Mode" indicated it was a "CHIP Card" used in the transactions.

After reviewing the evidence, the investigator concluded that both withdrawals likely used Mrs P's genuine card and didn't uphold the complaint.

Mrs P strongly disagreed with the investigator's conclusions and asked for a further review of her complaint which has now been passed to me for a decision.

I issued my provisional findings on the merits of Mrs P and Mr P's complaint on 27 August 2024. In my provisional findings, I explained why I intended to uphold their complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

*"What I've provisionally 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 authorisation is the Payment Service Regulations 2017 (PSRs). The basic position is that Santander can hold Mrs P 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 and PIN conclusively 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 Mrs P'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 a "CHIP Card" was used to authenticate the transactions.*

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

*Mrs P has denied using her card for the two successful ATM withdrawals (and the one failed attempt). When she contacted Santander about the issue, they informed her that a second use of her card had taken place earlier that morning. At the time, Mrs P was at her villa and told Santander she hadn't left the villa that day and she still had her card with her. So, it seems unlikely based on this testimony that Mrs P had left her villa to withdraw cash from the ATM. Especially considering it sounds like quite a journey to get to the town, so if Mrs P had been in to do some shopping, I'm sure she would have remembered, given the second use of her card was only a few hours earlier. I would also think she would be aware of the*

*daily ATM limit on her card which the user of her account didn't appear to know as they tried to withdraw a larger amount.*

*Having listened to several conversations between Mrs P and Santander, she sounded genuinely surprised when she was informed her card had been used. Mrs P was shocked to be told this and she strongly denied using her card. She maintained that only she had access to it, and it was kept secure. So, based on this, it seems unlikely Mrs P withdrew cash herself and it's implausible to think that an unknown third party was able to take the card, use it, then return it without Mrs P becoming aware of this.*

*There is evidence of persons using a camera when she input her card and PIN into a card reader earlier in the holiday, so it's plausible that someone else was able to obtain a copy of the card and see the PIN on a camera.*

*Santander have argued that their audit data disproves the theory that it was "cloned" because the chip was read. To explain a little more – some modern cards have a chip embedded in them that communicates with payment terminals and ATM's. There's no conclusive evidence that these chips can be cloned, but the magnetic card strip on the back can be.*

*Having looked at the audit data, all it says about the "Data Terminal Entry Mode" (the part Santander are currently relying on to say it was Mrs P's genuine card) is that it was a "CHIP Card". There's no disagreement that Mrs P's card has a chip embedded in it, but there's nothing in the audit data (that I've seen) to indicate if it was the chip or the magnetic strip that was read by the ATM. Therefore, it's plausible that the ATM read the magnetic strip on a cloned card and the PIN was known from being captured on a camera.*

*As I can't be sure how the transaction was authenticated at the point it was used at the ATM, I'm currently minded to uphold the complaint based on the current evidence.*

*But, even if I was persuaded that the audit data showed it was the genuine card that was used, Mrs P's testimony is persuasive about her own movements when the disputed transactions took place. There's no evidence to show that Mrs P used the ATM or allowed anyone else to use her card with her permission. Any other uses of her card would likely be considered unauthorised.*

*I'm not required to say what actually happened – only to determine if it's reasonable for Santander to hold Mrs P liable for the disputed transactions. So, based on a fair and reasonable basis, I'm currently minded to think that it's more likely than not that the disputed transactions weren't carried out by Mrs P. Therefore, the requirements for authorisation laid down by the PSRs can't have been met and I'm intending to instruct Santander to refund those disputed transactions. They'll also be required to pay interest at 8% simple (per annum) from the date of the transactions to the date of repayment."*

*I invited Mrs P and Mr P and Santander to give me any more evidence and information they wanted me to consider before issuing my final decision. Santander didn't agree with my provisional decision but wanted to bring the matter to a close "...for the benefit of their customers" and have offered to settle the complaint. Mrs P and Mr P repeated their concerns that they believed Santander were effectively accusing them of lying by making the claim and thought their own websites advice about "skimming" proved their point about what had happened.*

## **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, and as neither party had anything further to add, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

I wanted to clarify a few points for Mrs P and Mr P. Firstly is that I've not seen anywhere that Santander have accused Mrs P and Mr P of lying. The Payment Service Regulations 2017 dictate who can be held liable for transactions and that's what they based their own decision on, as have I.

Secondly – information from a card can be obtained through various means generally known as "skimming". What Santander believe is that the genuine card was used and it's chip was read by the ATM. There's no conclusive evidence that we've seen that shows a chip can be cloned. My assessment of that particular aspect of the evidence is that the audit data doesn't categorically show the machine read the chip – so it was plausible that the machine read a cloned copy of the card (it's magnetic strip) to complete the transaction, resulting in my findings.

## **Putting things right**

Santander will now be required (which I recognise they've already offered to settle) to refund the two disputed transactions which total £428 and pay interest at 8% simple (per annum) from the date of the transactions to the date of repayment.

## **My final decision**

My final decision is that I uphold this complaint and Santander UK Plc are required to settle it as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 11 October 2024.

David Perry  
**Ombudsman**