

The complaint

Mrs T complains Santander UK Plc is refusing to refund her £14,690 she claims was stolen through unauthorised withdrawals from her Santander bank account during 2010 and 2011.

What happened

I sent the parties a provisional decision in September 2024, in which I set out the following background to the complaint and my provisional findings, as follows:

Mrs T explained she visited a branch of Santander in either 2010 or 2011 to withdraw some funds. She said she discovered there wasn't any money in her account when there should have been, so she raised a complaint. Mrs T explained she has always spoken to Santander by visiting branches and said she chased this complaint up in 2018.

Mrs T said she complained to Santander about these missing funds again in January 2024. Santander issued a final response letter explaining it did not have to refund the withdrawals as per Financial Conduct Authority (FCA) rules and its own terms and conditions. Santander explained this was because Mrs T had raised the complaint regarding these unauthorised payments over 13 months after they had occurred and Mrs T was therefore out of time to raise this complaint.

Santander also said it didn't have any records of her making previous complaints regarding these withdrawals as Mrs T had claimed, and now has only limited records to investigate 13 years after the withdrawals. It provided our service with various logs showing the contact Mrs T had with Santander over the years since but there was no evidence in these logs that she had raised this complaint before.

Santander did provide evidence the withdrawals in dispute were cash withdrawals from several branches local to the area Mrs T lives, including the local branch she used. Despite Santander's position regarding the FCA rules, it did explain it would have required identification to process these withdrawals on each occasion, so it thought it was unlikely Mrs T did not make the withdrawals. Santander also said it did not think the withdrawals were consistent with fraudulent behaviour on the account, as the withdrawals were face-to-face over a two year period and sometimes as small as £100 on non-consecutive days.

Santander asked our service to decline the complaint because of the timeframe involved and the FCA rules regarding when complaints concerning disputed transactions need to be made.

Our investigator thought it was more likely than not Mrs T had complained about these withdrawals earlier in branch, so decided we could provide a view on her complaint. Having investigated the complaint our investigator thought Mrs T had, on balance, made these withdrawals. Our Investigator explained she was satisfied the various branches would have needed to have been sure of Mrs T's identity before issuing the funds over the counter. She said most of the transactions were in Mrs T's local branch and thought the circumstances of the withdrawals were inconsistent with fraudulent behaviour.

Since we issued our decision Mrs T has provided further information, in a telephone call to our investigator. She rejected our investigators recommendation, so her complaint has been passed to me to make a final decision.

My provisional findings

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

Where evidence is incomplete, inconclusive or contradictory, I have to make decisions on the balance of probabilities – that is, what I consider is more likely than not to have happened in light of the available evidence and the wider surrounding circumstances.

I appreciate how strongly Mrs T feels about her complaint. Although I may not mention every point raised, I have considered everything but limited my findings to the areas which impact the outcome of the case. No discourtesy is intended by this, it just reflects the informal nature of our service.

The evidence I have seen shows the withdrawals Mrs T disputes are all cash withdrawal from various branches in 2010 and 2011. The amounts withdrawn vary, the largest being £1,000 and the smallest being £100, the total withdrawn during this period is £14,690 over approximately 40 transactions. I am satisfied the branches in question are all local to Mrs T with many of the withdrawals being from the branch she uses regularly.

I have considered carefully the evidence provided by Santander, I appreciate its records do not show Mrs T raised a complaint about these transactions before January 2024, a point Mrs T disputes. We asked Mrs T whether she had any evidence of raising this complaint earlier. She said she had diaries from 2010 and 2011 which recorded when she made these complaints but has not been able to provide these or any other evidence to corroborate her recollection. She explained to our investigator she has had several health issues over the years, including the period in question.

I have considered the evidence Mrs T has given our service about raising these issues in branch, her health concerns and the claim she raised complaints at the time with Santander which it did not record. I have not seen any evidence to support Mrs T's claims from Santander about raising the complaint earlier, but I have carefully considered the comments she made to our investigator, which does suggest she may have had conversations in branch earlier which were not recorded.

Taking these matters all into consideration I have decided it would be best for all parties if I continue to make a decision on the merits of this case and, because of the lack of compelling evidence either way, provisionally consider the complaint. Also, as I appreciate this is contrary to Santander's position, I have decided to issue a provisional view to invite further comments from all parties before issuing my final decision.

Dealing now with the withdrawals, the relevant regulations here are the Payment Services Regulations 2017 (PSRs). In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So the issue for me to determine was whether it was more likely than not that Mrs T carried out the transactions himself. If she authorised someone else to carry out the transactions for her, this would also be considered as carrying out the transactions herself.

I have carefully considered the transactions, Santander's response and the account Mrs T has provided. As I have noted, because of the time involved, the evidence I have is limited.

Banks are not required to keep records indefinitely and typically keep records for approximately six years, so firstly, I do not think there is any failure by Santander in not being able to provide detailed information about these transactions.

I therefore must consider whether the transactions are more likely than not to have been unauthorised on the information I do have. I also note the comments Mrs T made about the withdrawals possibly being made by someone inside Santander and will also cover this concern below.

Having considered all the evidence presented to me, I provisionally think on balance, it is unlikely anyone other than Mrs T withdrew the funds in question. My reasons for this provisional decision are that:

- The withdrawals were made from a series of branches, meaning it is unlikely a Santander employee made them. I consider, on balance, it is unlikely a Santander employee would have worked in several branches or visited a series of branches to withdraw funds fraudulently from Mrs T's account,*
- The branches the withdrawals are local to Mrs T, so I am unable to rule out she was not in the local area when these withdrawals took place,*
- The records show the withdrawals were made in person and this is inconsistent with fraudulent activity,*
- The withdrawals were often for small amounts, again this would seem inconsistent with fraud, as usual patterns of fraud are to withdraw large amounts as quickly as possible before the fraud is detected,*
- Identification would have been required for each withdrawal. I therefore do not think it is likely, on balance, an individual other than Mrs T could have convinced a series of different cashiers that over 40 withdrawals were genuine when they were not, without the issue being noticed,*
- As I have said, there is no evidence from the time of fraud being raised or reported, considering the amounts involved I think it unlikely Mrs T wouldn't have noticed these withdrawals at the time and had the opportunity, despite her health issues, to raise them in good time and pursue them back in 2010 and 2011 or shortly afterwards,*
- I also provisionally think, although I have given Mrs T the benefit of the doubt about reporting these issues at the time for the purposes of making a merits decision, if Santander had failed to respond or record her complaint, it would have been more likely than not Mrs T would have pursued this significant claim at the time. I think it likely there would likely have been some record of this, by her own account, this does not appear to have happened for several years,*
- Finally, the withdrawals happened over an extended period of time, again, this is inconsistent with fraud, again, the usual pattern would have been to take as much money as they could as quickly as they could, not multiple small value withdrawals when a larger balance was available.*

Based on the evidence I have seen, I provisionally do not think the evidence I have supports the claims Mrs T has made, and I am currently minded not to uphold her complaint.

I was sorry to hear of Mrs T's health concerns, and appreciate this is not the outcome she wants, but I hope my reasoning explains why I am unlikely to be able to uphold this complaint.

As I have said, I do invite comments from both parties before issuing my final decision.

My provisional decision and the parties' responses

Santander responded to my provisional decision explaining it appreciated my provisional findings regarding the disputed transactions and agreed with all the points I had made in relation to the disputed transactions.

Santander further explained it recognised branch conversations are not recorded but that it had provided notes which showed its contact with Mrs T since 2012. Santander reiterated these notes do not show Mrs T had previously raised these transactions as disputed with Santander when she had contacted it. Santander explained despite accepting there can be extenuating circumstances where customers may not be able to pursue a complaint for a period of time, it could not reasonably be expected to investigate fraud reported up to 14 years after it had occurred. Santander also referred to Section 74 of the PSRs. This states a payment service user must notify the payment service provider of any unauthorised transactions without undue delay and in any event, no later than 13 months after the debit date.

In response, Mrs T explained she wanted to provide evidence to support her position. Our investigator spoke with Mrs T and we extended our deadline for submissions for further evidence to support her claim. Despite doing so, Mrs T did not provide any further evidence to our service.

I have carefully reconsidered this case following the submissions from Santander and Mrs T. Having done so the lack of evidence to support Mrs T's claim and the considerable length of time involved, has persuaded me to change my provisional opinion. I have considered Mrs T's vulnerabilities she described to our service and appreciate these could have accounted for some delay in reporting the disputed transactions to Santander. However, I have again carefully reconsidered this length of time and do not think it is reasonable or fair to expect Santander to agree to extend the provisions in the PSRs to allow for such a significantly delayed complaint.

Based on the responses I now provisionally think, on balance, we cannot investigate this complaint. I am satisfied on balance there is little evidence to support Mrs T's claim she raised the issues earlier. I have been persuaded by Santander's argument it is more likely than not, there would have been some evidence in its records to support Mrs T if she had raised the claim earlier. As there is not, and on review, without any further supporting evidence from Mrs T, I think it is difficult to continue to give the benefit of the doubt as I did previously, when there is so little to support Mrs T's version of events. I am further persuaded by the fact that our service gave Mrs T several weeks to present some evidence to support her claim, but she has not been able to.

For the reasons I have given I am unlikely to uphold this complaint.

I issued this second provisional decision in September 2024

The parties' responses to my second provisional decision

After issuing the above provisional decision in September, I again invited both parties to make further representations.

In response, Mrs T reiterated she had further evidence which would show she raised her complaint earlier. Our service asked Mrs T to provide this further evidence before the end of September. This has not been provided to our service and we therefore remain in the same position as we were when I wrote the provisional decision.

Santander responded to say it had nothing further to add to my provisional decision.

I therefore remain of the view, as this complaint was raised more than 13 months after the disputed transactions occurred, our service cannot look into this complaint. Due to the extensive time between the transactions and Mrs T reporting them, I do not think it is fair or reasonable to expect Santander to investigate. Therefore, I cannot uphold this complaint.

I appreciate Mrs T will be disappointed with my decision, but I hope she will appreciate where there is a lack of evidence to support a claim, it is difficult for our service to find a business has done anything wrong.

My final decision

For the reasons I have given, I do not uphold Mrs T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 1 November 2024.

Gareth Jones
Ombudsman