

The complaint

Mr G complains that Santander UK Plc won't refund him for transactions taken from his account that he says he didn't agree to.

What happened

Mr G held an account with Santander. In Late November 2022 five payments left his account totalling £4,625, through a third party payment initiated from a different financial provider he held an account with – I shall refer to this firm as B. The payments sent to B were subsequently moved on to a cryptocurrency exchange.

Over the next few days his Santander account received several payments from different third parties, that were then moved on to the same cryptocurrency exchange. Some of these payments were later recalled by the sending bank, saying that they believed the sender had malware on their phone.

Mr G denied making the transactions himself and said he had been away. Santander's systems detected potential malware on his device. They refunded one payment to the cryptocurrency exchange of £400 but declined to refund anything further. They also closed his account with no notice.

Unhappy with this Mr G complained, but Santander didn't think they'd done anything wrong. They said because the funds had gone to his own account with B then he would have to raise it with them directly. They also said the decision to close his account was in line with the terms, and they were not obligated to provide an explanation.

Mr G referred his complaint to our service. One of our investigators looked into what happened but didn't see that Santander needed to do anything. They reasoned that the technical evidence suggested the transactions had been made from Mr G's device, so it was reasonable for Santander to hold him liable.

The complaint was then passed to me to decide. After review I let Santander know that I thought it was likely the payments were unauthorised. Santander accepted that this was possible, but felt as the payments had been initiated through B it would be their responsibility to refund Mr G.

I issued a provisional decision that said the following:

Did Mr G authorise the transactions?

The relevant regulations to authorisation of payments are the Payment Services Regulations 2017 (PSRs). The general principle in the regulations is that if Mr G didn't authorise the payments, then he won't be liable for them. In this case Mr G has denied making the transactions from his Santander account to his account with B. But the technical evidence

suggests these were initiated from his known device. There's been no indication that his device was taken from him, or anyone else had access to his device.

However, there has been a suggestion that Mr G's device could have been infected with malware. From my understanding it is possible for a device to have software that allows it to be accessed remotely without the owner knowing, and bypass other security features to allow transactions to be made. Mr G has told our service he'd spoken to the software manufacturer for his device, and they'd removed a QR code from it. But he hasn't been able to demonstrate what was discussed, or how any malware could have been added to his device.

That said, I'm persuaded that I should consider this issue of malware seriously. Firstly, Santander have accepted that their systems detected potential malware, albeit several days after the transactions to B. This isn't necessarily conclusive. But it was enough for them to give him the benefit of the doubt and refund one £400 transaction. I can also see notes that Santander advised him to get his phone professionally cleaned.

I also note that the report from one of the banks which sent funds into Mr G's account mentions that their customer may have had malware. I've also seen evidence that Santander have accepted that another party who paid money into Mr G's account could have had malware on their device. There seems to be several links to malware in this case, and the links are more than fanciful.

I've also considered the wider circumstances of this complaint. Looking over Mr G's account history with both Santander and B, there doesn't seem to be any history of using or investing in cryptocurrency. It seems unlikely that he would suddenly decide in the early hours of the morning to invest most of the available funds in his Santander in cryptocurrency. It was also need me to accept that he was likely running a sophisticated cryptocurrency scam. I've seen nothing to suggest this was the case, or that he has willingly allowed his account to be used to launder the funds from a scam. He's also not claimed ownership of the funds paid in.

Mr G has been consistent that he doesn't know what happened on his account, and he seems genuinely bemused about what has happened. In the full circumstances of the complaint, I'm inclined to say that his story is largely credible. On balance, I think it's more likely than not he didn't authorise the payments from his account to B, and they were carried out by some unknown third party without authorisation.

Should Santander refund the transactions?

Ordinarily Santander should refund transactions which are unauthorised. There is provision in the PSRs for them to hold Mr G liable, if he's failed in his obligations to keep his personalised security credentials safe – either intentionally or with gross negligence. But I've been given no indication this was the case.

Santander have however argued that because the payments were initiated through B and the third party Open Banking link, then it should be B's responsibility to refund. I have considered this point, and I understand why this would seem reasonable to them.

In the PSRs, Section 76 "Payment service provider's liability for unauthorised payment transactions" says:

- (1) Subject to regulations 74 and 75, where an executed payment transaction was not authorised in accordance with regulation 67 (consent and withdrawal of consent), the payment service provider must—*

- (a) refund the amount of the unauthorised payment transaction to the payer; and
- (b) where applicable, restore the debited payment account to the state it would have been in had the unauthorised payment transaction not taken place.

...

(5) Where an unauthorised payment transaction was initiated through a payment initiation service provider—

- (a) the account servicing payment service provider must comply with paragraph (1);
- (b) if the payment initiation service provider is liable for the unauthorised payment transaction (in relation to which see regulation 75(2)) the payment initiation service provider must, on the request of the account servicing payment service provider, compensate the account servicing payment service provider immediately for the losses incurred or sums paid as a result of complying with paragraph (1), including the amount of the unauthorised transaction

This is echoed in the Financial Conduct Authority's document "Payment Services and Electronic Money – Our Approach" from November 2021. When discussing unauthorised payments made using the provisions of payment initiation services it says:

8.214 – Where an unauthorised, non-executed or defectively executed transaction is initiated through a PISP, it is the ASPSP's responsibility to provide a refund in line with regulation 76 and regulation 93 of the PSRs 2017 and this guidance. If the PISP is liable under regulation 76 or regulation 93 of the PSRs 2017, the ASPSP can then seek compensation from the PISP which must, on request, provide that compensation immediately. The amount of compensation should cover the full amount which the ASPSP was required to refund to the customer. We note that PSPs may put in place voluntary arrangements for the settlement of such liabilities between themselves.

In this case I'm satisfied that Santander is the account servicing payment service provider (ASPSP) and B is the payment initiation service provider (PISP). So, the expectation under the regulations here is that Santander provide the refund to Mr G for the unauthorised transactions. As such, I see it's reasonable for Santander to refund this directly to him, in line with the PSRs and the relevant industry guidance.

Account closure

Santander also took the decision to close Mr G's account shortly after these disputed transactions. They have a broad commercial discretion on who they provide accounts to. The terms of the account allow them to withdraw banking facilities for any reason so long as they provide at least two months' notice. But in this case, they provided no notice. Under the terms this can only be done under extremely limited circumstances.

From the available notes I can see Santander had contacted Mr G to discuss the activity on his account but couldn't reach him. But I can also see Santander had previously spoken to Mr G about the transactions he disputed and had also given him the benefit of the doubt about the malware on his phone. I think that Santander ought reasonably to have taken this into account when considering the closure, despite being unable to reach him. Overall, then, I'm not persuaded that the immediate closure was reasonable.

The funds in the account were returned promptly to Mr G, so I'm satisfied that he wasn't left without his funds unnecessarily. But I'm minded it will have added undue distress and inconvenience to a situation where he'd likely been the victim of fraud. I see that it would be

appropriate for Santander to pay some compensation to reflect this.

Putting things right

Santander have already refunded £400 to Mr G. Although from looking at the account movements it seems likely this was a transaction made with money transferred into Mr G's account by another victim. So, I'm not persuaded of his entitlement to these funds.

I see that it's reasonable for Santander to refund the amounts sent to his account with B, less this £400 – so this totals £4,265. This will put him back in the position he would have been in before the unauthorised transactions took place. I also see it as reasonable for Santander to add 8% simple interest per annum to this amount to reflect the loss of use of these funds.

Having reviewed what happened, I don't see that Santander ever got a grip on what happened. I accept that it doesn't appear that Mr G was able to explain what happened, but it does seem he was genuinely unaware of how his account had been used in this way. It's likely he was the victim of fraud here, so I'm not satisfied that Santander handled the situation with the appropriate empathy or understanding. I'm satisfied £200 compensation would be appropriate here.

Santander should also take steps to ensure no negative information is recorded against Mr G on his credit file or fraud prevention databases in relation to the activity on his account.

This provisional decision was accepted by Santander.

Mr G responded to say it was fair. But he also wanted to add that he had spoken to his device manufacturer about potential malware, and they had helped him remove it. He said he'd attempted to contact them to ask if they had a record of the removal but could not speak to someone to confirm this. He also emphasised that he found the behaviour of Santander distressing, and his conversations with them were not helpful in understanding what happened.

It now falls on me to issue my final decision.

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.

I'm glad both parties broadly agree with the findings from the provisional decision. Having re-reviewed the evidence, I'm not persuaded I need to depart from the findings in the provisional decision. I'm satisfied that the payments from Mr G's account were more likely than not unauthorised, and under the relevant regulations it would be reasonable to ask Santander to refund him.

I've taken on board what Mr G has said about the service from Santander, and I'd like to assure him I considered this when deciding the appropriate overall compensation. I've no doubt this was a very stressful situation for him, but I also have to bear in mind most of the stress will be down to the actions of the unknown fraudster. I'm satisfied the £200 is fair compensation for the failings on Santander's part.

Putting things right

To resolve this complaint Santander must:

- Refund the £4,265 still outstanding
- Add 8% simple interest per annum to this amount, from the date of payment to the date of settlement. If Santander feel they must deduct income tax from this interest award, they should let Mr G know how much has been deducted. They should also provide him with a certificate showing this if he should ask. He may then reclaim this from HMRC if he is eligible.
- Pay Mr G £200 compensation
- Ensure no negative information is recorded against Mr G's credit file or with the fraud prevention agencies.

My final decision

My final decision is that I uphold this complaint and direct Santander UK Plc to settle the complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 15 November 2024.

Thom Bennett
Ombudsman