

The complaint

Mr and Mrs B complained because Santander UK Plc refused to refund them for transactions they said they hadn't made.

What happened

On 19 February 2024, Mr and Mrs B went on holiday abroad. Mrs B received a text from Santander, saying that unusual transactions had debited their account. They realised that their debit card and wallet had been stolen. The holiday rep helped them to phone Santander at 18:07, but Mrs B was understandably upset and couldn't pass the security. Santander's call handler blocked the card so that no further transactions could be made, but told her that it couldn't log the fraudulent transactions until she could pass security. When Mr and Mrs B returned home on 6 March, they rang Santander and Santander investigated.

When the card had been stolen, there had been 10 attempted transactions, of which 8 were paid:

| Sterling equivalent amount £ | Time | |
|-------------------------------------|-------------|---|
| 90.81 | 16:03:07 | Cash machine |
| 262.15 | 16:03:58 | Cash machine - failed (limit exceeded) |
| 176.48 | 16:04:43 | Cash machine |
| 436.92 | 16:23:53 | |
| 651.76 | 16:28:26 | |
| 273.03 | 16:30:48 | |
| 75.82 | 16:42:14 | Contactless |
| 230.31 | 17:05:16 | |
| 128.42 | 17:19:56 | |
| 611.01 | 17:42:07 | Failed (card had been blocked by Santander) |

The total of the fraudulent transactions which were paid out was £2,063.55. Apart from the contactless one, all the others had been carried out using the genuine debit card and the correct PIN. The PIN was entered correctly first time, on every transaction.

Santander rejected Mr and Mrs B's claim for a refund of the fraudulent transactions. It said that there was no evidence to show how the PIN had been compromised – in other words, how a fraudster had been able to know the correct PIN for the debit card. Mr and Mrs B weren't happy about this and complained.

Santander sent Mr and Mrs B its final response to their complaint on 13 March. It said it had reached the correct decision based on the evidence. It did however refund the £75.82 transaction because this had been carried out contactless, without entering the PIN.

Mr and Mrs B remained unhappy and contacted this service. They asked for a refund for the other seven fraudulent transactions which went through and weren't refunded by Santander. When asked about the PIN, Mrs B said it was an old purse, so it was possible she'd written it down there at some point.

Our investigator partly upheld Mr and Mrs B's complaint. He recognised that no point of compromise had been identified for the PIN. But he believed Santander should have acted sooner to block the transactions, as the activity was out of character for Mr and Mrs B's account. He pointed out that in the previous three months, there had only been nine transactions for more than £150, seven of which had been direct debits or faster payments.

He said that the first two disputed transactions had been made within a minute of each other, and the amounts wouldn't have triggered any intervention by Santander. The third, for £436.92, could have raised suspicion. But he considered that Santander should have acted when the fourth transaction, for £651.76 was attempted. This was because of the jump in value and the total value of transactions made in such a short time. So the investigator said that Santander should refund the £651.76 transaction, plus the subsequent ones for £273.03, £230.31 and £128.42.

Santander didn't agree.

It said Mr and Mrs B still hadn't given a reason why they'd kept their PIN in the wallet with their card, and this was against the terms and conditions of the account. So Santander considered they'd been negligent. If the PIN hadn't been kept with the card, the fraudster wouldn't have been able to make any of the payments.

Santander also said that it had to get a balance between blocking too many genuine payments, causing inconvenience to customers, with identifying fraudulent payments. It said that although 10 payments in an hour and a half wasn't Mr and Mrs B's usual activity, but they were on holiday, so increased spending wasn't unusual.

Santander also said that if Mr and Mrs B weren't acknowledging they'd kept the PIN with the card, which was negligent, the only explanation for the payments was that they'd authorised them themselves.

Santander asked for an ombudsman's decision.

My provisional findings

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

What the Regulations say

In my provisional decision, I explained that there are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. 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.

The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they’ve failed to keep their details secure to such an extent that it can be termed “*gross negligence*.” This is why Santander said that it considered Mr and Mrs B had been negligent if they’d kept the PIN with the card without a reasonable explanation.

The regulations don’t define “gross negligence”, but there has been advice from the regulator, the Financial Conduct Authority (FCA), and there have also been legal cases. The relevant standard is a higher standard than the common law standard of negligence. The FCA say it has to be “a very significant level” and in a key legal case, the judge said it had to be serious disregard of risk.

What’s most likely to have happened here

The disputed transactions, except for the contactless one, were made using the card with its genuine chip, and the correct PIN. There were no incorrect PIN attempts. There are 10,000 possible combinations of a four-digit PIN, so it’s most unlikely a fraudster could have correctly guessed the PIN. Sometimes a PIN can be obtained by a fraudster “shoulder-surfing” an account holder, which means watching as they’ve keyed in their PIN. But that can’t be what happened here, because the previous time Mr and Mrs B had used the PIN had been 20 days earlier, on 30 January – and that had been in the UK, not abroad.

As the PIN was used, Santander concluded that either Mr and Mrs B had made the transactions themselves, in which case they’d be liable, or they’d kept the PIN with the card, in which case they’d been negligent. Either way, it wouldn’t refund them.

I considered what was most likely to have happened here. In my provisional decision, I accepted that Mr and Mrs B did genuinely have the wallet and card stolen. I listened to the phone call when Mrs B, with the help of the holiday rep and with Mr B also present, rang Santander on 19 February. Mrs B was clearly very shocked and distressed, and I consider that they were genuinely the victims of theft and fraud. So I don’t consider they carried out the transactions.

I went on to consider how the PIN could have been known by the fraudsters. Mrs B told our investigator that it was an old purse so it was possible she might have written it down at some point. I think that’s most likely here, because there’s no other clear way in which the person who stole the wallet could have known it.

The test for “*gross negligence*” is a high bar, and I noted that Santander hasn’t alleged that Mr and Mrs B were grossly negligent, only that they were negligent.

At what point should Santander have intervened to stop the transactions?

Banks have to balance the fact that customers expect their payments to be processed promptly, with the need to detect and prevent loss through fraud. Their systems are confidential and I wouldn’t expect Santander to disclose exactly what would trigger their systems to block a payment.

But I considered what would be fair and reasonable. Here, the 10 attempted transactions took place in just over an hour and a half. The 8 which went through totalled over £2,000. As our investigator set out, this wasn’t typical of previous spend on Mr and Mrs B’s account, either in terms of the amounts, or in terms of the speed. Very quick payments are typical of fraudulent spend, as the fraudster tries to maximise their gain before the account is blocked.

So I agreed with the investigator that it would have been reasonable to expect Santander to have blocked the payments on Mr and Mrs B's from and including the £651.76 payment. Adding this, and the subsequent three payments of £273.03, £230.31 and £128.42, makes a total of £1,283.52. Santander did refund them for £74.82. So I find that it should refund Mr and Mrs B with £1,283.52.

But I also thought that Santander should pay Mr and Mrs B interest on this amount, at the standard 8% interest rate, from 19 February 2024 to the date of payment. So I issued my decision as a provisional decision so that both sides could provide comments on this, by the date for responses.

Responses to my provisional decision

Mr and Mrs B said that they were pleased to see that an end might be in sight, and they were ok with the outcome.

Santander said it didn't agree that it should have been expected to flag the fourth payment. It said it didn't agree it was an unusual payment, but it would pay in order to bring the complaint to a close.

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've reconsidered my decision in the light of the responses to my provisional decision.

I don't agree with Santander when it says it shouldn't have been expected to flag the fourth payment. This fourth payment was the fifth attempted, taking into account the 16:03 pm failed cash machine payment which failed because of the exceeded cash limit. It was a short time between the first one, and the £651.76 payment, with five attempted transactions within 25 minutes. Multiple transactions are commonly a sign of fraudulent activity, as the fraudster seeks to maximise their gain before the account can be blocked.

The £651.76 payment was also a jump in value. The first two payments had been for the sterling equivalent of £90.81 and £176.48 – and the fourth one paid out was for £651.76. In fact, it could also be said that the third successful payment for £426.92, which was the fourth attempted, could have raised suspicions.

I haven't seen anything to indicate that this level and rapidity of spend was usual on Mr and Mrs B's account. Santander claimed that Mr and Mrs B were on holiday so increased spending wouldn't be unusual. But I don't agree, and I still consider that Santander should have flagged the payments at the latest by the fourth successful payment for £651.76.

My final decision

My final decision is that I uphold Mr and Mrs B's complaint against Santander UK Plc. I order Santander UK Plc to:

- refund Mr and Mrs B with £1,283.52. This is the total of the fraudulent payments for £651.76, £273.03, £230.31 and £128.42; and
- pay Mr and Mrs B interest on £1,283.52 from 19 February 2024 to the date of payment.

If Santander deducts tax from the interest on the award, it should provide Mr and Mrs B with a tax deduction certificate to show how much it has deducted, in order to allow them to reclaim the tax from HMRC if appropriate to their personal circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 27 December 2024.

Belinda Knight
Ombudsman