

The complaint

Mrs F complains that Santander UK Plc hasn't refunded unauthorised payments made using her debit card.

What happened

Unfortunately, Miss F was burgled in early 2024 and her bank cards and mobile phone were among the items stolen. She woke up in the early hours after the burglary and saw that payments had been made from her bank accounts. She used her landline to alert Santander to the theft and reported disputed payments on her account.

Santander looked into what happened but had concerns about how a thief would've been able to carry out all the actions, so didn't uphold Mrs F's complaint.

Mrs F came to our service and our Investigator upheld her case. The complaint originally involved transfers out of Mrs F's account as well as payments using her cards, but ultimately Mrs F only asked us to make a decision on the card payments, as she wasn't able to access everything needed for us to investigate the transfers. Santander didn't agree the case should be upheld, so it's now been passed to me for a 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.

The starting position in line with the Payment Services Regulations 2017 ("PSRs"), the relevant legislation here, is that Mrs F is liable for payments she's authorised, and Santander is liable for unauthorised payments.

For a payment to be regarded as authorised, the PSRs explain what steps must be completed. They set out that the payer (Mrs F) must have given their consent to the execution of the payment, or a series of payments. And this consent must be given before, or if agreed between parties, after the payment; in the form, and in accordance with the procedure, agreed between the payer and the firm; and can be given via the payee or a payment initiation service provider.

It seems to be accepted at this time that it wasn't Mrs F personally making the payments in dispute here. But for completeness, I also find this to be the case.

Mrs F has explained she was burgled, and her bank cards and mobile phone were stolen. Santander's records show someone attempted to log into Mrs F's banking on the evening of the burglary using her phone and was unsuccessful. They were then able to go through a process which involved a text message being sent to her phone, which included a code that enabled them to reset the details for her banking. After this process, we can see the person successfully logs in. We also know Santander received a call in the early hours after the burglary, from what sounds like a male whispering and trying to impersonate Mrs F, after it blocked her card.

Considering the burglary and the other information we hold, I'm satisfied that Mrs F's phone and cards were stolen and it was the thief that then carried out the disputed payments. Mrs F did not consent to the payments or have any part in completing the form or procedure required to make these payments. So in line with the PSRs, they are unauthorised.

The PSRs explain that Santander is liable to refund unauthorised payments unless Mrs F failed in certain obligations with intent or gross negligence. For someone to fail with gross negligence they would need to have seriously disregarded an obvious risk, falling significantly below the standard expected of a reasonable person. But this test can't be applied payments that were made by distance contracts or using a credit facility.

Santander asked for an Ombudsman to review the case as the agent said *"I am currently not in agreement with your view as the customer has not protected any on her valuables."* So, it seems it's arguing that Mrs F failed to take all reasonable steps to keep her personalised security credentials safe. It hasn't commented on one of the payments being a distance contract or them taking Mrs F into an overdraft.

Mrs F's core valuables for this case (her phone and bank cards) were kept in her locked home overnight. And some other valuables (if we consider her security details 'valuables') were kept in a locked safe within her home. It's unclear to me how Mrs F therefore *failed* to keep them safe. She was the victim of a crime. Someone broke into her home and that is how they accessed the valuables, so I cannot agree with Santander's stance here. I think most, if not all, reasonable people would consider that keeping their valuables with them at home at night is taking an appropriate level of care and acting to avoid harm from obvious risks.

There have been some comments from Santander in relation to Mrs F stating she kept an encrypted record of her PIN in her safe. But Santander's records show that Mrs F's PIN was viewed in her mobile banking application prior to each ATM withdrawal, so this is how the thief accessed this data. And as above, we're aware they used her stolen mobile phone to reset her banking and log in that way, so the contents of the safe aren't relevant to these payments. But even if they were, as above, I would argue that by keeping her information encrypted and in a locked safe in her home, which was only accessed due to a burglary, Mrs F was taking reasonable steps to prevent risks, not ignoring them.

Looking at what happened here and how the thief accessed Mrs F's account and money, I can't see she failed to protect her valuables or security credentials. So I can't agree any action by Mrs F in this case amounts to gross negligence on her part, so that she isn't due a full refund under the PSRs.

I accept there have been some concerns raised by Santander around Mrs F still having the debit card in her possession that was used for the disputed payments. But Mrs F has explained that her late husband also banked with Santander and I'm satisfied that while she reported that she had a Santander card in her possession, it wasn't the one used by the

thief. It's clear from the data we hold that this card was stolen and used by the thief, so this doesn't change my outcome here.

Our Investigator recommended Santander pay Mrs F £450 in compensation for the distress and inconvenience it caused her by the way it handled her claim and I'm in agreement that this award is fair. Mrs F is in poor health and has other vulnerabilities that impact her daily. Looking at the investigation carried out, I can't see that Santander did this appropriately the first time. While the case was with our Service it asked a number of questions to us that, if it considered this information important, it should've asked Mrs F during its own investigation.

Had Santander carried out the level of investigation I'd expect first time, it could've upheld this case when it was first reported and given Mrs F her funds back much sooner. It could've also prevented the distress it's caused her through what's now been a drawn-out process which required her to re-live the traumatic burglary and the events surrounding it multiple times. So I agree £450 compensation is due.

Putting things right

In line with the PSRs, Santander UK Plc needs to put things right by refunding Mrs F the unauthorised card payments totalling £782.50 alongside 8% simple interest from the date of loss to the date it refunds the money.

I can't see that Mrs F was charged anything when she went overdrawn due to the unauthorised payments. But if she was, any fees or charges associated with this should be refunded.

Santander should also pay Mrs F £450 in compensation for the way it has handled her unauthorised claim.

My final decision

For the reasons set out above, I uphold Mrs F's complaint and require Santander UK Plc to pay the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 20 March 2025.

Amy Osborne
Ombudsman