

The complaint

Mr M complained because Santander UK Plc refused to refund him for transactions he said he hadn't authorised.

What happened

On 1 November 2024, Mr M rang Santander. There were three transactions on his current account to a gambling firm, totalling £800. Mr M said he hadn't made these.

Santander investigated, but didn't agree to refund Mr M. It said it believed Mr M had authorised the transactions himself. Mr M complained.

Santander issued its final response letter on 11 November. It said the reason it had declined his claim was that the disputed transactions were made using an IP address (a computer identifier), and a device, which Mr M had previously used for genuine banking activity. It also said that one of the transactions had been authenticated in Mr M's mobile banking app, using the correct passcode. Santander also said that it could see the transactions went to a gambling merchant with which Mr M had a previous relationship.

Mr M wasn't satisfied and contacted this service.

In reply to the investigator's questions, Mr M said he hadn't lost his phone. He said it had been on his living room couch at the time, and he'd been in another room, but he wasn't aware of anyone else having his phone. He said his debit card was in his wallet and left on the window ledge. He said his login and security details were saved on multiple devices, and were also written down. He said he also had his passcode tattooed on his arm, and that anyone who knew his date of birth would know the passcode.

Our investigator didn't uphold Mr M's complaint. She said that Mr M had given his version of events, but she wasn't persuaded by what he'd said. The three disputed transactions had been carried out using Mr M's debit card, on his device. That device had been used to make several undisputed transactions to the same merchant before. And the same IP address had been used for several previous genuine transactions.

The investigator also said that Mr M had given different responses about what security he'd got on his phone. One of the transactions had been authorising using Mr M's passcode – which he said he'd had tattooed on his arm. Mr M had also said that he'd had a friend with him at the time, but he said he didn't suspect anyone of doing it. The investigator said she was of the opinion either Mr M had authorised the transactions himself, or had been grossly negligent by allowing someone else to authorise them.

The investigator also pointed out that the gambling transactions had been made to a gambling account that belongs to Mr M. So any winnings would be paid to his account, and wouldn't benefit any third party.

Mr M didn't agree. The investigator explained her view, and also provided Mr M with the names of charities which might be able to help him if he needed help.

Mr M asked for an ombudsman's decision. He added further points. He said that:

- His phone has no security, passwords or biometrics, so anyone picking up his phone could use it. He said his app had a 5 digit passcode which was his date of birth which he had tattooed on his arm. He said he needed to write things down after a serious accident. So he said anyone who knew his date of birth could have guessed the app security code.
- He said he hadn't allowed anyone else to authorise transactions, and hadn't authorised them himself. He said he didn't suspect anyone as the people were supposed to be friends, but he said the police suspected his friends. He said this wasn't negligent because he wouldn't expect anything like that in his own home.
- He said the police were investigating what had happened to the money after went to the gaming company.

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 Regulations, and account Terms and Conditions

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*."

There are also Terms and Conditions for Mr M's Santander account, which he'd have accepted when opening the account. The relevant parts of these say:

Section 9: *"Summary: you must keep your Personal Security Details secure and follow the safeguards in this document and on Santander.co.uk to keep your Personal Security Details, PIN, card and chequebook secure."*

...

9.7 The care of your chequebooks, cards, PINs, Personal Security Details and selected personal information is essential to help prevent fraud and protect your account. To ensure this you must:

...

c) always take reasonable steps to keep your cards safe and your PIN, Personal Security Details and selected personal information secret and dispose of them safely.

...

f) not disclose your PIN, any one time passcode we give you or other Personal Security Details to anyone else, not even a member of Santander staff;

g) not write down or record your PIN, Personal Security Details or personal information on your card (or anything kept with it) or on any documents relating to your account. If you do write down or record your PIN, Personal Security Details or personal information, you must disguise this information so that it cannot be understood by anyone else;

...

j) take reasonable steps to avoid selecting a PIN or Personal Security Details that may be easy to guess;

...

o) take reasonable steps to secure your mobile phone or other mobile device (for example set up a security password or PIN) so that it cannot be used to access Mobile Banking if it is lost or stolen and so that others cannot access any alerts or other communications from us that may be stored on it.”

The Regulations, and account Terms and Conditions, are what decide the outcome here. So what I have to decide is whether it's more likely than not that Mr M, or a third party fraudster unknown to him, carried out the three disputed gambling transactions. I also need to consider whether Mr M kept his device and security details secure enough to meet the Regulations and the Terms and Conditions.

Who is most likely to have carried out the disputed transactions?

I've looked at the technical computer evidence about the disputed transactions.

This shows that Mr M's mobile was registered to his Santander account on 25 January 2024. It's the only device which has been used since then on his account. It was used before and after the disputed transactions, as well as for the disputed transactions.

The computer evidence also shows the IP address where the transactions were carried out. I can see that Mr M has regularly used this IP address for previous transactions and for online banking.

One of the transactions, for £500, was authenticated using Mr M's mobile banking app and his correct passcode.

I've also seen the computer evidence that Mr M had previous undisputed dealings with the merchant.

So all the computer evidence shows that Mr M's mobile, IP address and security information were all used for these transactions. And he'd previously used the gaming company and had an existing relationship with it.

The payments all went to Mr M's gaming account with the merchant. This means that any winnings would only be paid back to the same account. I can't see that any fraudster would have done that, because the fraudster wouldn't benefit from any winnings paid to Mr M.

So I find that it's most likely that Mr M carried out the disputed transactions himself. I have however also considered whether it's likely they were made by someone else in his house at the time. Mr M's evidence about others in his house at the time hasn't been clear. But he's said he didn't suspect anyone else. And I can't see that a third party would benefit by making gambling transactions to Mr M's gambling account – because any winnings would go into Mr M's own account. So I find that it's most likely that it was Mr M himself who authorised the disputed transactions.

Mr M's further evidence

I've also considered the points which Mr M raised in response to our investigator's view.

Mr M's evidence that he didn't keep his phone or passcode secure doesn't mean he's more likely to get a refund. In fact it means the opposite, because the Terms and Conditions I've quoted above make clear his responsibility to keep his devices and security information secure. The evidence Mr M provided about his device being unsecured; his passcode being easily guessable by anyone who knew him; and writing down his security details, are just

some of the ways in which his evidence shows he broke the Terms and Conditions. This counts as gross negligence.

I note that Mr M said he had to write everything down following a serious accident. But I haven't seen that anything on Santander's documents to show that Mr M ever raised this with them, or discussed how he could keep his security information secure. The first time he mentioned it appears to be in response to our investigator's view.

So even if it was most likely that a third party had carried out the transactions, I'd have considered that Mr M was grossly negligent in not keeping his devices and details secure. This would have meant Santander wouldn't be liable. But in fact I think it's most likely that Mr M authorised the transactions himself, for the reasons I've set out above.

Finally, I note that Mr M said the police were investigating what had happened to the money after went to the gaming company, but he hasn't provided any more information about that. In any case, I can't see how the gaming company would be able to provide information about who authorised the money going out of Mr M's Santander account. It would only have information about what subsequently happened to the money it received. This wouldn't tell us who sent the money from Mr M's Santander account to Mr M's gaming account.

For all these reasons, I consider it's most likely that Mr M authorised the transactions himself. This means that Santander doesn't have to refund him.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 February 2025.

Belinda Knight
Ombudsman