

The complaint

Mr and Mrs K are unhappy that Santander UK Plc have refused to reimburse them for transactions they didn't make.

What happened

In February 2024, Mr K's wallet was stolen during a bus journey which held Mrs K's Santander bank card for their joint account. Shortly after, there were two Automated Teller Machine (ATM) withdrawals of £150 each. They reported the matter to Santander and the police.

Santander declined to provide a refund as the transaction had been completed using Mrs K's genuine card and Personal Identification Number (PIN). Unhappy with this Mr and Mrs K raised a complaint, Santander maintained their decision to decline the claim as they couldn't understand how the PIN was compromised.

Mr and Mrs K appealed this decision providing further information from the police which states that CCTV from the bus showed two parties involved in the theft of Mr K's wallet. And the CCTV from the ATM shows one of these parties withdrawing from money using one of Mr K's cards. Mr K also explained that other banks had refunded the fraudulent transactions made on his cards.

Santander issued another final response letter. They explained their decision had remained unchanged as the PIN was known to the person who made the withdrawals. Mr and Mrs K referred their complaint to our service. Our investigator said that he was satisfied the ATM withdrawals weren't authorised. However, he wasn't able to establish how a third party was able to learn Mrs K's PIN and thought the most likely scenario was that the card and PIN were stored together, so he didn't uphold the complaint.

Mr and Mrs K disagreed. They explained that the police had stated that the thief was a known criminal. They also said they weren't able to answer how the thief obtained the PIN but said that the PIN wasn't noted down anywhere, and criminals seem to have a way of getting this information and using it to withdraw funds. They pointed out that other banks had already provided Mr K with a refund. And that the whole experience has had a very negative impact on their mental health so losing out on the funds would make it worse.

Our investigator's view remained the same. So, the complaint has been passed to me for a 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 don't dispute that Mrs K didn't make these transactions herself and she didn't authorise the withdrawals totalling £300. However, under the relevant regulations, Mrs K can still be held liable for unauthorised payments if she failed to keep her details, such as her PIN, secure to

such an extent that it could be deemed as 'gross negligence' – which I believe is the case here. I'll explain why.

Having looked at Santander's records, I'm satisfied the withdrawals were completed using the genuine card and PIN. While Mr and Mrs K's testimony and the police evidence explains how Mrs K's card was stolen, the withdrawals couldn't have been made without her PIN.

I've thought about how the fraudster knew Mrs K's PIN. Mrs K has said that her PIN wasn't written down anywhere, but she hasn't been able to provide any persuasive explanation for how her PIN was compromised.

The technical evidence from Santander shows that Mrs K's PIN wasn't amended, so it was the randomly system generated number she was provided. The record also shows that there was one incorrect PIN attempt before the fraudster was able to enter the correct PIN and withdraw a total of £300.

This means that the fraudster was able to easily guess the randomly generated system PIN after only one incorrect attempt. On balance, I think this is very unlikely given that there are thousands of combination possibilities.

The bank statements show that Mrs K hadn't used her card on or around the day it was stolen. So, this rules out the possibility that the fraudster may have learned Mrs K's PIN, for example, by hovering over her shoulder while she made a transaction. There was no point where I can safely say Mrs K's PIN was compromised.

All things considered, I think the only plausible explanation is that there was a written record of Mrs K's PIN in Mr K's wallet along with her card. And I'm not persuaded that the fraudster was able to enter Mrs K's PIN number correctly after one attempt, if the PIN hadn't been noted it down in the wallet.

The terms and conditions of Mr and Mrs K's account requires Mr and Mrs K to keep their personal security details safe. It also makes it clear that if Mr and Mrs K don't keep their card or personal security details safe either intentionally or carelessly, they won't be provided with a refund for unauthorised payments.

Given this, I think Mrs K was reasonably required under the terms and conditions of the account to keep her PIN safe. I think a reasonable person would consider it careless of Mrs K to have left her PIN in Mr K's wallet along with her card – which as I've explained, is the most probable explanation for how the fraudster was able to withdraw funds from the account.

I appreciate the other banks have provided Mr K a refund, but this doesn't mean that Santander are also obliged to do so. I'm satisfied based on the evidence I've seen and the relevant rules, Santander can hold Mr and Mrs K liable for the withdrawals. So, I won't be asking Santander to reimburse Mr and Mrs K.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

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

Ash Weedon
Ombudsman

