

The complaint

Mr C complains that Santander UK Plc won't refund him for disputed transactions carried out on his account.

What happened

On 3 and 4 November 2024, £650 was withdrawn from Mr C's account using his Santander debit card. Mr C says he doesn't know who made the withdrawals. He says his bag containing his debit card was stolen when he was sleeping in hospital.

When Mr C discovered the transactions, he says he contacted Santander to report them as unauthorised and asked it to refund the money. But Santander didn't think it was liable for his loss. Unhappy with this, Mr C raised a complaint as he felt he should receive a full refund.

Santander said it wasn't liable because:

- The disputed transactions had been carried out using Mr C's genuine debit card, and his Personal Identification Number (PIN).
- Mr C had explained his PIN was kept with his debit card. By keeping these together, Mr C had aided the compromise for the disputed transactions to be completed.

Mr C remained unhappy and referred a complaint to this service. But our investigator didn't think Santander was responsible for his loss as she believed that Mr C had been grossly negligent by keeping his card and PIN together. And because of this, Santander was not responsible for any refund. Mr C didn't agree and asked for an ombudsman's 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 Payment Services Regulations 2017 (PSRs) say, in summary, that a payment service provider should generally refund a transaction that comes out of one of their consumer's accounts that they didn't authorise. There are limited exceptions to this, such as when the consumer has breached their obligations to keep their security credentials secure either intentionally, or by being grossly negligent with them.

In this case, it appears to be accepted by both parties that Mr C didn't make the transactions himself, and that they were carried out by an unauthorised individual.

I have to consider whether Mr C breached his obligations to keep his security credentials secure, or if he acted with 'gross negligence'. Our service would consider gross negligence to be a lack of care that goes significantly beyond what we would expect from a reasonable person – a serious disregard of an obvious risk.

It appears Mr C initially told Santander that his PIN wasn't kept with his card. But then, during a call he had with Santander during its investigation into his fraud claim, he explained that the PIN was written down and kept with his card, and someone took it from the hospital where he was sleeping. Mr C has since disputed saying this; however, I've listened to the call recording Mr C had with Santander and he definitely confirmed his card and PIN were kept together. So I consider this is likely what happened.

Santander has told us that Mr C also had a previous fraud claim the year before, also for chip and PIN transactions where Mr C said his card had been stolen. Santander declined to refund the disputed transactions he reported at the time. I find this previous fraud claim is very important when considering Mr C's ability to keep his account security credentials secure. In view of this, he should've been even more aware of the importance of keeping them safe from someone who may use them without his permission.

Mr C has told us he's a vulnerable individual. I'd like to thank him for being open with us and telling us about his circumstances. I've thought about Mr C's vulnerabilities when it comes to considering gross negligence. But Mr C kept his card and PIN together, in a location where he knew others could access it. The PIN doesn't seem to have been disguised well, if at all, which enabled the fraudster to carry out the transactions. And I'm not aware of any reason why Mr C's vulnerabilities would mean he's unable to keep his card and PIN secure.

I therefore find that Mr C not only appreciated an obvious risk, but also disregarded that risk. And this is especially in view of the fact he'd previously had a similar fraud claim. In the circumstances I'm persuaded that he has failed to keep his security details safe, with gross negligence. On that basis it's not unreasonable for Santander to decline to refund him.

My final decision

For the reasons given 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 C to accept or reject my decision before 11 March 2025.

Lorna Wall
Ombudsman