

The complaint

Mr S and Miss H complain Santander UK PLC (“Santander”) refuses to refund them for transactions on their account they say they didn’t authorise.

What happened

The facts of this complaint are well known to both parties, so I won’t repeat them in detail here.

In short, Mr S and Miss H say they were victim of a sim swap and as a result Mr S’s phone, personal details and Santander online banking account were compromised. Mr S says two unauthorized transactions were made from their Santander account on 20 May 2024, and a loan was taken out in his name with another company. Mr S and Miss H say Santander should refund the total amount of £7900 for the unauthorised transactions.

Santander says it recognises the transactions were not carried out by Mr S and Miss H, and that it’s evident they didn’t make these payments. However, as the money was sent to another account in Mr S’s name, Santander says there has been no loss from the Santander account, so it won’t refund these payments.

Our investigator considered this complaint and decided to uphold it in Mr S and Miss H’s favour. She felt that it was clear the transactions were unauthorised, and so as per the rules in the Payment Services Regulations 2017, Santander should refund these in full. Santander didn’t agree with this outcome, 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.

The Payment Services Regulations 2017 say that 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. So, what determines the outcome here is evidence about the authorisation of the payments.

Mr S and Miss H have provided evidence of the new e-sim that was ordered for Mr S’s phone number on 20 May 2024. They have also provided evidence that many of Mr S’s app’s and online accounts had been compromised, as well as a detailed testimony about the events that took place. Santander has agreed that they were subject to a SIM swap and that their personal and banking details had been compromised. It says the evidence it has shows one-time passcodes (OTPs) were obtained to access Mr S and Miss H’s online banking account and a new device was registered at this time. So there seems to be no dispute that Mr S and Miss H were not responsible for these transactions.

The payments in dispute were sent to a cryptocurrency trading platform to an account in Mr S’s name. Mr S says he did open an account with this platform, but didn’t complete the setup of this account himself. And he said he had not linked any of his accounts to it. I’ve

also not seen any evidence from Santander that Mr S had sent money to this cryptocurrency provider in the past. But as the account was in Mr S's name Santander says it is not willing to refund the unauthorised transactions as there had been no financial loss at the point the funds left his Santander account.

The PSRs clearly state that:

76.—(1) Subject to regulations 74 and 75, where an executed payment transaction was not authorised in accordance with regulation 67 (consent and withdrawal of consent), the payment service provider must—

(a) refund the amount of the unauthorised payment transaction to the payer.

(2) The payment service provider must provide a refund under paragraph (1)(a) as soon as practicable, and in any event no later than the end of the business day following the day on which it becomes aware of the unauthorised transaction.

It's Santander's case that because the unauthorised funds went to another account in Mr S's name, it should be the responsibility of the other bank to refund him. Santander have argued that the disputed transactions from their Santander account didn't cause a financial loss, and at the point the money was transferred out to the other account, Mr S still had control over it.

The regulations are clear here when it comes to the issue of authorisation. If the account holder didn't consent (authorise) to the disputed payments, then they're due a refund, because Santander didn't have the appropriate instruction from them to release the funds from their account. There's no case being made here that Mr S or Miss W were somehow involved or negligent, so I was surprised that Santander took the position not to refund them.

I've seen evidence from the cryptocurrency provider that the funds were then sent on to other wallets and are now untraceable and unrecoverable. Ultimately, I am satisfied that Mr S and Miss H have lost the funds that were fraudulently transferred out of their Santander account, and I have no concerns that they will be refunded twice for this loss. So, I am upholding this complaint and asking Santander to refund them for the unauthorised transactions.

Putting things right

Santander UK PLC should refund Mr S and Miss H the £7900 in dispute. It should also add 8% simple interest from the date the transactions were made till the date the money is returned.

My final decision

I am upholding this complaint and Santander UK PLC should put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H and Mr S to accept or reject my decision before 1 July 2025.

Sienna Mahboobani
Ombudsman