

complaint

Mr S complains that Santander UK Plc has held him responsible for transactions that he says he didn't make or authorise.

background

Mr S was abroad, on holiday with friends, when the transactions took place. The total value of the transactions was nearly £1600, and they were made by use of Mr S' debit card. The transactions were mostly retail purchases but included cash machine withdrawals.

The transactions were all made using the original card that had been issued to Mr S and by correct entry of the personal identification number ("PIN"). Mr S says that his card did go missing – although he isn't certain as to how that happened - and he reported that to the bank, but he was not aware of how anyone had become aware of the PIN, not having written it down, noted it or advised it to anyone.

Mr S says the last transaction made by him on the account, made by use of the card and entry of the PIN, was timed at 2.41am and this is the last time he can remember seeing the card. Mr S speculates that a fraudster watched him enter the PIN and was able to obtain the card later. But Mr S admits that he does not have clear memory of the night's events.

The disputed transactions were made between 5.25am and 10.06am. The bank considered that if the card had simply been found, an unknown fraudster wouldn't have been able to guess the PIN – that is not disputed by anyone; and if a fraudster had seen Mr S enter the PIN, it is unlikely that it would have taken so long to either obtain the card and start using it or just delay usage.

Our adjudicator considered that the bank ought to refund the value of the disputed transactions to Mr S. She considered, on balance, that the card was most likely to have been taken by a fraudster who was able to view Mr S entering his PIN at the time of the last genuine transaction.

She considered that a possible explanation for the delay in using the card was that the fraudster was waiting for the retail outlets, where the card was used, to open. And she found that the pattern and nature of card usage was such that it seemed to her unlikely that Mr S had made the transactions himself.

It was not inconceivable that someone viewed the PIN being entered but was only able to use the card much later, perhaps even because it was only available after some time. And it was also noted by the adjudicator that there were attempted transactions after Mr S had reported his card missing and the account blocked.

Santander has asked that the complaint be reviewed by an ombudsman. It remains concerned that Mr S doesn't have clear memory of the events on the night; and there has been some inconsistency in what Mr S has said about the night. Santander believes it to be unlikely that a fraudster made the disputed transactions by viewing Mr S enter the PIN and later obtaining the card.

It has also suggested that the pattern of spending is not wholly representative of fraud.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've come to the same findings and conclusions as the adjudicator.

I can't know for certain what happened here and, where evidence is inconclusive, or contradictory, I have to reach a decision on the balance of probabilities; that is, what I consider is most likely to have happened, given the evidence available and the wider surrounding circumstances.

The rationale of the bank in not agreeing to refund to Mr S the value of the disputed transactions has been set out and shared with all parties as has the opinion of the adjudicator – as to why the bank should refund – with the bank and Mr S. I need not repeat it all here.

It's the case that either argument can be made but I need to decide which is more likely. Has Mr S provided some form of authority for the payments to be made or has he been a victim of fraud, without him being appropriately negligent with the security of his card and PIN?

The only additional argument for me to consider, made by the bank, and not particularly addressed by the adjudicator, is that if Mr S' account was being used by a fraudster, the nature of the transactions was unusual – in themselves – and also given the available funds in the account.

In my opinion, however, that rather assumes that the PIN was viewed by the kind of fraudster who may never make themselves known to their victim and seeks to make maximum use of available funds.

Of course, 'fraudsters' take different forms and can operate in different ways. For instance, they may merely be opportunistic and, maybe, here was able to see Mr S enter his PIN but only have occasion to use the card much later, when it fortuitously arose. And therefore in a manner which mightn't look like the usage of someone who sets out to learn a PIN and obtain a card.

In this case, I consider there is sufficient doubt about how the transactions came to be made, and sufficient doubt that Mr S authorised them, that I can't safely say that Mr S did so or was appropriately negligent with the security of his card and PIN to enable them to happen.

my final decision

In light of my conclusions, Santander should refund to Mr S the value of the disputed transactions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 February 2016.

Ray Neighbour
ombudsman