

complaint

Mr C feels that Santander UK Plc has treated him unfairly with regard to how it treated some disputed transactions in 2014.

background

I issued my provisional decision in September 2015, a copy of which is attached and forms part of this final decision. In my provisional decision I explained why I was minded to not uphold Mr C's complaint. I invited all parties to let me have any further submissions before I reached my final decision.

Mr C has been sent the decision and has said he doesn't think it's fair and explained why he thinks this. Santander has received the decision and has said it has nothing further to add.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I've considered Mr C's comments. He says he's not happy and still contends that he didn't authorise the payments-having accepted he did enter his PIN. I appreciate why Mr C is upset-he's clearly been defrauded by the retailer in Spain. I think it important to say that in Mr C's letter he makes no argument for why Santander should cover the costs of this crime or indeed what it has done wrong. I'm sorry that Mr C has lost this money-but it's not the fault of Santander. So I don't think his arguments are sufficient to make me change my provisional decision. So I see no need to change the overall stance I took. So the complaint isn't upheld. This means that Mr C still cannot recover the money spent.

my final decision

For the reasons set out above and in my provisional decision, I do not uphold the complaint as set out in my provisional decision (attached) against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 6 November 2015.

Rod Glyn-Thomas

ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr C feels that Santander UK Plc has treated him unfairly with regard to how it treated some disputed transactions in 2014.

background

Mr C disputed two transactions on his credit card in December 2014. These transactions were made from a shop in Spain. Mr C says that in purchasing some electronic equipment the retailer told him repeatedly that his card was being declined. It transpires it wasn't and two significant sums were taken. Later Mr C became concerned and informed Santander. It refused to reimburse the amounts and when he complained about this it didn't agree with him.

Mr C complained here and the adjudicator upheld the decision partly by saying Santander should be liable for one transaction but not the other. Santander does not agree so this complaint has been passed to me.

my provisional findings

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

Mr C and Santander have contradictory views on certain elements of what happened here. There is little evidence of what exactly was said and what exactly happened during the time Mr C made these transactions. So I need to make my decision on what I think was most likely to have happened-or in other words on the balance of probabilities.

Mr C says that he bought a camera in a shop in Spain. As he was leaving this shop he says he was approached by a man who told him that the camera needed further equipment and that he could sell him that equipment from another shop some distance away. Mr C went to this other shop with this man and was offered the equipment and decided to purchase it.

Mr C says in a letter to Santander that the transactions were made without his knowledge or authorisation. Mr C latterly accepts he entered his personal identification number (PIN) on the card machine up to three times to make these transactions (not knowing the cost of them). Mr C says he was told on each occasion that his card had been declined. It is clear that during this process he called Santander to extend his credit limit and Santander did this. Mr C says he then left the shop with some goods having been told that all his transactions had been declined and that he could pay later. On returning to the UK he checked his account and discovered that the two transactions had gone through. One was for over £300 and the other for over £700. He then says he checked the goods he had purchased and discovered that their value was only a few pounds.

Santander says that Mr C approved the transactions with his genuine card and correct PIN entry first time, each time. It says that Mr C should check the amount of the transaction before entering the PIN. If he didn't do so he has in effect given "*blanket consent*" to any amount entered by the retailer in the transaction. It doesn't think it should bear the cost of these transactions.

Santander's records show that the transactions were made on 18 December 2014. On 22 December these records show that Mr C called Santander, worried about these transactions. But he decided only to block the card going forward. He called back on 24 December saying that he'd discovered the equipment he'd bought was of little value compared to the prices paid. He then asked for the transactions not to go through but was told they already had.

It's quite possible that Mr C has been "*fleece*d" (in his own words) by the retailer. I can fully understand why he's annoyed. However just because Mr C has been treated this way by this retailer doesn't mean the fair outcome is for Santander to bear the cost. I have to consider, among other things, whether the bank's done something wrong that suggests it should bear responsibility.

I've considered whether Santander should have tried to chargeback these transactions. However, Mr C accepts he came away with goods from the shop and that he entered his PIN in the machine on three occasions. Where that's the case, no valid chargeback right exists. And even if he paid well over the usual amount for those goods, there's no basis for me to say Santander could have done more to address the bad bargain he made.

Mr C argues he didn't give consent to these transactions. However he does accept he entered his PIN for each one. The adjudicator thought that Mr C authorised the first transaction, but not the second. I don't think that's the right analysis. Mr C says he entered his PIN several times because the retailer told him payment was being declined. That provides an explanation as to why he did so. But I think in

entering his PIN, Mr C was effectively approving a request to Santander for each payment. So I think it'd be wrong to say the transactions weren't properly authorised.

I've also considered legislation which in certain circumstances provides protection to consumers who make transactions. Mr C accepts he has the goods and his argument is now mainly about the price paid. Mr C has said very little about what he actually received other than they can be bought far more cheaply. That in itself isn't likely to be something Mr C can use as a reason for recovery. I've no way of knowing whether there were failings here. There is no proof of purchase or other evidence that might suggest the retailer misled Mr C about the goods and their price. So I can't find Santander responsible for any failings here either.

So in summary it is my provisional view that this complaint does not succeed. This will mean that Santander does not have to bear the cost of these transactions or make any sort of payment to Mr C.

My provisional decision

For the reasons I have explained my provisional decision is that I am currently minded not to uphold this complaint against Santander UK Plc.

Rod Glyn-Thomas
ombudsman