

complaint

Mr K complains that Santander UK Plc allowed money to be taken out of his account after he lost his debit card. The spending on the account made it go overdrawn. Santander's now passed the amount Mr K owes to a debt collection agent. Mr K wants Santander to refund the money taken out of his account and to not be pursued for the overdrawn balance.

background

Mr K says he lost his Santander debit card. He'd spent money in a betting shop and shortly afterwards drew money out from a cash machine. It wasn't until later in the day Mr K realised his card had gone missing. He reported the loss of his card to a branch of Santander the following morning.

Between the time Mr K made the cash withdrawal and him realising his card was missing, a large number of gambling transactions took place in betting shops previously used by Mr K. These took his account overdrawn. Mr K says he didn't spend the money and Santander shouldn't have allowed his account to go overdrawn.

Santander wouldn't refund the money. The bank said the spending was carried out using Mr K's genuine card – as the chip embedded in the card was read. And the PIN (which should have been known only to Mr K) was entered correctly each time. The bank explained it could allow an account to go overdrawn. This was set out in the terms and conditions of the account. As Mr K wasn't happy with Santander's response, he contacted us.

One of our adjudicators looked into Mr K's complaint. But she didn't think Santander had done anything wrong – and didn't recommend the bank refund Mr K.

The adjudicator was satisfied Mr K's genuine card was used. She accepted it was possible Mr K might have lost this after making the withdrawal at the cash machine. But it didn't seem likely that a thief would also be able to get to know Mr K's PIN or then use the card in betting shops that Mr K had used before. This wasn't how she'd expect an opportunistic thief to use a card – particularly as any winnings would normally be credited back to the card.

The adjudicator also noted Mr K had logged onto his online banking several times on the day he says he lost his card. She thought this would probably have alerted him to his account being overdrawn – or at least having a negative available balance. The adjudicator also thought it was strange Mr K hadn't got in touch with Santander as soon as he realised his card had gone missing.

Mr K didn't agree with the adjudicator's view. He couldn't accept that Santander had allowed the spending to go through. He didn't have an overdraft on the account. And the staff in the branch (where he reported the loss of his card) hadn't told him about the overdrawn amount.

The adjudicator responded to say the Santander branch staff probably wouldn't have been able to see any pending spending on the account. They'd only be able to see what had actually gone through at the time Mr K was in the branch. So it wasn't surprising if they told Mr K his account wasn't overdrawn at the time.

As Mr K still wasn't happy with what the adjudicator said, his complaint's been referred to an ombudsman to review and issue a final decision on.

my findings

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

I can see Mr K feels very strongly about what's happened here. That's clear from what he's said to the adjudicator (and to Santander). And that's not surprising. There's a large amount of money involved. So Mr K's bound to be concerned – particularly now that he's being chased for the overdrawn balance.

But I'm afraid I have to tell Mr K that I agree with the adjudicator here. Santander doesn't have to refund the spending in the betting shops. Indeed, there's not much I can add to what the adjudicator's already told Mr K. I can see she's looked into things thoroughly and set out the position quite clearly.

In simple terms, I think it's most likely Mr K spent the money. I'm not persuaded he lost his card. I realise these are difficult messages to give. But it's what the available evidence leads me to conclude. In the unlikely event Mr K didn't spend the money himself; it was most likely carried out by somebody known to Mr K – and with his knowledge and/or agreement.

Although Mr K should have taken steps to prevent this, I accept it's possible a thief may have been able to see Mr K's PIN when he made the withdrawal at the cash machine. But I just don't think it's likely they would then go and use Mr K's card in betting shops in various locations that Mr K just happened to have used himself before.

There's no obvious benefit in a thief using Mr K's card in this way. Winnings are almost always credited (back) onto the card. So without some way of being able to access Mr K's account, it's difficult to see what the thief would have to gain. It's possible for winnings to be paid out through other means. But this normally needs the person doing so to be able to confirm their identity. And that wouldn't be possible here.

It's probably a little frustrating for Mr K that Santander allowed the spending to go through and his account to become overdrawn. And that'd be made worse if branch staff did tell Mr K that his account wasn't overdrawn. But it would only really become an issue if I didn't think he'd carried out the spending. And, as I've said earlier, I think that is the case. I'm satisfied Mr K spent the money.

Given that Mr K logged onto his online banking in the evening he says he lost his card, I'm surprised he didn't contact Santander straight away. That's also what the terms and conditions of the account say he should do. And as Mr K had seen his account balance the previous evening, I also find it strange he should ask the branch staff about pending transactions the following morning.

Given how strongly Mr K feels about what's happened he may want to take the matter further through other routes. But my decision brings to an end what we – in trying to resolve Mr K's dispute with Santander informally – can do for him. I'm sorry to disappoint Mr K.

Santander can pass debts to an agent to collect money on its behalf. And it can sell a debt to another company if it wants to. Whatever may be the case here, I'm satisfied Mr K owes the money.

But I accept it's possible Mr K may have some difficulty in repaying the overdrawn balance. So it's worth me reminding Santander (and through them any debt collection agent) that it should respond positively and sympathetically to Mr K if he's in that position.

That doesn't mean Mr K shouldn't be asked to repay the debt – far from it. It's just that whoever is collecting the money, should work with him to agree a sustainable way to repay the money owed. And that also needs Mr K to work with Santander (or its agent).

my final decision

For the reasons I've given, my final decision is that Santander UK Plc doesn't have to refund the spending Mr K says wasn't carried out on his account either by him or with his authority.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 1 July 2016.

Andrew Davies
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