

complaint

Mr A complains Santander have refused to refund a number of transactions he says he didn't consent to.

background

On 11 September 2017 Mr A received quarterly student loan payments totalling £4,814.76 in to his overdrawn account.

The disputed activity began on the same day. An initial cash withdrawal of £250 on 11 September 2017 was followed by a £300 withdrawal the following day. Later that day several high value chip and PIN authenticated transactions took place leaving Mr A's account once again overdrawn.

The unusual nature of the chip and PIN transactions (as well as one on 23 September 2017) caused Santander to contact Mr A using the mobile phone number it had for him to ask that he confirm whether transactions were carried out by him. A positive response was received from Mr A's mobile phone on both occasions.

Although Mr A's PIN was used for a number of transactions which he disputes, on 26 September 2017 the PIN was incorrectly input three times but was unblocked when someone contacted Santander. Mr A denies having used the card or confirmed any transactions as genuine.

After 12 September 2017, activity on Mr A's account was limited. Due to the overdrawn balance several direct debits were returned unpaid. Mr A says he made a small cash deposit to the account on one occasion but otherwise had no part in the activity that took place, including two other small cash deposits.

On 27 September 2017 a new mobile phone number was added to Mr A's Santander profile. Then on 26 October 2017 there was a large credit to the account of £7,000 followed by a further credit of £4,500 both of which were quickly sent to existing payees via Mr A's online banking facility. A further credit of £4,500 took place on 27 October 2017 but an attempt to transfer this out of the account was reversed. Santander appear to have called the number they held on file to confirm one of the payments was genuine.

Mr A called Santander on 30 October 2017 to report the unusual activity on 26 and 27 of October 2017. He reported having lost both his card and his mobile phone. Shortly afterwards Santander received a call from another financial institution reporting one of the credits to his account as fraudulent. Mr A did not mention or dispute the activity prior to 26 October 2017 at this point.

Santander concluded the transactions were authorised by Mr A so didn't provide a refund. It also decided to close Mr A's account.

On 22 December 2017 Mr A contacted Santander again. He said he'd discovered further fraudulent transactions – specifically all of those which took place after his student loan credits on 12 September 2017.

Santander's position remained unchanged and Mr A referred the matter to our service.

What Mr A has said:

- He lost his card and PIN in September and reported this to the bank in branch at the time.
- He paid in cash at the Bethnal Green branch on 21 September 2017 but didn't make the other two cash deposits.
- He only used his card locally and normally goes to the Bethnal Green branch.
- He has an iPhone which didn't require a passcode to open. He's never lost this phone.
- He lives with his family and children – both of whom are under 18.
- He doesn't have any other bank accounts and used his wife's account during September and October 2017, but she isn't willing to provide the statements.
- He believes he would have received letters or emails about returned direct debits in September or October 2017 but can't remember.

What Santander have said:

- There's no record of Mr A having reported his card lost before 30 October 2017.
- The card and PIN were used to pay in cash at the Bethnal Green branch on 21 September 2017, but they can't confirm whether the card and PIN were required on the other occasions.
- Their records demonstrate that they sent text messages on several occasions and left a voicemail for Mr A on 12 September 2017 about the unusual transactions. On each occasion a positive response was received.
- In order to access Mr A's online banking on a new device his customer ID, password and passcode would have all been required.
- On 26 September 2017, someone was able to call them and pass security in order to unblock Mr A's card after the PIN attempts had been exceeded.
- On 26 October 2017 Mr A said that he recognised the credits into his account but not the payments out of his account. He also said he lost his phone which had his online banking details recorded.
- Mr A didn't report the transactions after his student loan was paid in until 22 December 2017. This was after his claim was initially declined.

One of our investigators looked into Mr A's complaint and didn't think that it should be upheld.

She was satisfied that Mr A must have had the card in his possession in order to deposit funds into the account on 21 September 2017. She wasn't persuaded that Mr A could have failed to notice such significant amounts of money, on which Mr A seemed to rely, had gone missing.

She also didn't think there was a reasonable explanation for how someone was able to obtain, not just Mr A's card and PIN, but a significant amount of other information about him including his online banking details. She concluded that Mr A had likely authorised the transactions.

Mr A didn't agree. He said that he'd been the victim of identity theft and shouldn't lose out because of this.

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'm not upholding it.

Where the evidence is inconclusive or contradictory, I need to make a finding on the balance of probabilities, that is to say what I think is more likely than not to have happened.

Mr A makes two main complaints. First that he should receive a refund of payments that he says he didn't give his consent to. And, second that he should have his account restored as he had no knowledge of the activity that led to its closure.

Did Mr A authorise the transactions?

The Payment Service Regulations 2017 set out that Santander can only hold Mr A responsible for transactions he's authorised. To demonstrate this Santander need to show that the transactions were authenticated correctly and that Mr A consented to them.

The transactions which Mr A disputes were authenticated in several different ways. Santander have provided evidence that his PIN was used along with his genuine card to authenticate the cash machine withdrawals and point of sale transactions. The payments made from his online banking were authenticated using Mr A's online banking security information. So, I'm satisfied that transactions were authenticated correctly.

This alone isn't enough for Mr A to be held responsible. Santander also need to show that Mr A consented to the transactions.

Mr A says he can't remember when he lost his card. But it's evident he used his card to credit cash to his account ten days after the disputed activity began.

It's also apparent from his previous account usage that Mr A expects and relies on his loan payments. They are normally followed by a large cash withdrawal. I'm surprised that on this particular occasion Mr A apparently failed to notice the money had gone missing.

Even if I was to accept Mr A's testimony that he reported the card missing in a branch of Santander (something for which there is no evidence) this can't have happened until after 21 September 2017 – so doesn't explain why he made no attempt to access the money and enquire about the missing funds before then. Given that the account appears to have been Mr A's main account, I'm also surprised that he made no attempts to contact Santander to find out where his new card was.

Mr A's online banking records suggest he was regularly accessing his account, at least prior to the phone number being changed, so I'm surprised he didn't notice the activity he now disputes.

It's also likely (and seemingly accepted by Mr A) that he would have received correspondence from various creditors after his direct debits were returned unpaid. Yet this too doesn't seem to have alerted him to the disputed activity.

The small credits and other payments which take place after 12 September 2017 appear consistent with an attempt to manage an overdrawn account – not the actions of a fraudster or someone who was unaware of the balance. It's very unlikely a fraudster would credit funds to an account that they might not be able to retrieve.

I think it's more likely than not that Mr A carried out all of the activity on the account up until at least 21 September 2017 himself. And, given that it took him almost two months after the initial fraud claim for him to report these transactions it's very difficult to find Mr A's account of events about this to be persuasive.

After 27 September 2017 it appears that a third party may have been using Mr A's account. I say this because a new phone number is added to the account and there are several incorrect PIN attempts. But I think it's more likely than not that the third party was doing this with Mr A's knowledge.

It's likely that a new device was used to access Mr A's online banking after the new phone number was added. Santander have said that in order to register a new device Mr A's customer number, passcode and password would have all been required to do this and there's no explanation of how someone other than Mr A would have known these details – unless Mr A shared them. Even if Mr A's device was used, there's no explanation as to how his online banking was accessed.

Santander's notes suggest that Mr A originally told the bank he'd lost his phone with the online banking details recorded on it. But he now says the phone was never lost – so as well as a contradiction here there doesn't seem to be an explanation for how this information could have been known to a third party.

I also note that whoever had the card had enough information about Mr A, or his account, in order to pass security in order to unblock Mr A's card.

There's also no plausible explanation of how Mr A's PIN was obtained. It's possible that he was shoulder surfed during, or at some point before, his last chip and PIN transaction by someone known or unknown to him. But, given the card was in his possession on 21 September 2017, a third party would have needed to take the unnecessary risk of taking and returning the card to him on at least one occasion. It's very difficult to see how, or why, an unknown third party could do this.

It might be possible for someone close to Mr A to have observed his PIN and subsequently taken the card. But I understand he lives with his wife and children who are both under 18 – none of which he's implicated.

I think that acquiring Mr A's phone, card, PIN and personal information wouldn't be easy, and would likely be impossible for anyone but those he knows personally.

But I'm not persuaded that this could have happened twice – either side of Mr A's cash deposit and all during a time when Mr A failed to notice the absence of a significant part of his income or the deterioration of his financial position for more than six weeks.

I'm satisfied Mr A authorised all the transactions in dispute himself either by carrying them out or by giving a third party permission to transact on his account.

the account closure

Mr A's account appears to have stayed open until 14 March 2018 having had a balance exceeding its overdraft since the transactions in October 2017. Santander wrote to Mr A saying that the account would be closed once the overdrawn balance was repaid.

I've reviewed Santander's terms and conditions and I'm satisfied it had sufficient grounds for closing Mr A's account. Santander are entitled to close accounts which they consider present a significant deal of risk to them. Given Mr A had been the recipient of fraudulent funds and considering the numerous inconsistencies in his account of events, I can't say Santander have acted incorrectly or unfairly in closing Mr A's account.

my final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 March 2020.

Ben Murray
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