

complaint

Mr W complains Santander UK Plc will not refund money taken from his account without his authority.

background

In the middle of June 2016, a large number of transactions left Mr W's account in favour of an online betting company – B. In total, there were nine transactions amounting to £25,000.

Mr W told Santander that he had neither made nor authorised these transactions. He told Santander that he had been at a street party and that he had lost a number of items including his computer.

According to Santander's fraud notes, a few days later he told them that the items had been taken from his home address. At the same time, he told Santander that he was not a regular user of betting sites. He subsequently refused to tell them which computer device he had actually lost.

When Santander made enquiries into the account held with B, it was told that this account had been opened at the start of June 2016. It could also see that on 7th June, a transaction of just over £7000 was made from B into Mr W's account. Mr W had not queried this transaction at the time.

So, Santander refused to refund the money to Mr W. It said it was satisfied that he had made the transactions himself.

Mr W then pursued Santander through the courts – however, it appears that this claim was struck out at an early stage and was pursued no further.

He then bought the complaint to our service and asked that we look into matters for him. He told us that he had not made nor authorised these transactions - and he also wanted to be compensated for Santander closing his account and removing his overdraft facility and for the incorrect recording with the credit reference agencies – both in relation to the account showing as still being open with a £5 balance and also with regard the late payment markers recorded.

Our adjudicator looked at whether Santander had done anything wrong here in rejecting Mr W's complaint. He (the adjudicator) thought that the disputed transactions should not be refunded as the evidence showed Mr W had either made or authorised them. With regards to Santander not updating Mr W's credit file to show the account was closed, our adjudicator upheld this part of the complaint and awarded compensation of £100. The complaint in relation to the late payment markers was also rejected.

Mr W was not happy with this response. He made further submissions and asked for an ombudsman to review his complaint.

my findings

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

disputed transactions

Generally speaking, Santander is required to refund any unauthorised transactions. The *Payment Services Regulations 2017*(relevant regulations) make that clear. However, if the evidence suggests that it's more likely than not that Mr W made or authorised these transactions himself, then he can be held liable for them.

Based on the evidence I have seen from Santander, it's clear that Mr W's card details were used to make these transactions – but this isn't enough to hold him liable. The relevant regulations say that he has to also consent to the payments being made.

So, with these principles in mind, I need to decide whether it is fair and reasonable for Santander to have concluded that he authorised these transactions – and I think that it is. I say that for the following reasons:

- Less than a week before these transactions, a relatively large payment *from* B was made into Mr W's account. He did not query this at the time – or in his lengthy submissions since. I think it is fair to say that this showed an existing relationship with B.
- Mr W had logged onto online banking since that payment had been made but had not alerted Santander to it.
- When Santander contacted B it was told that an account in Mr W's name – with his correct date of birth and address had been provided. More importantly, the IP address used when opening the account with B was the same address used by Mr W in the past when logging onto online banking and when carrying out transactions which he was not disputing.
- Mr W would not be specific as to which device was taken/stolen from his house during the street party – but the device used to make the disputed transactions was the same device Mr W had used previously.
- There is no benefit in a fraudster making these transactions to B because any winnings would go back into Mr W's account.
- Mr W's account to our adjudicator that the transactions were not necessarily gambling transactions but made by someone he knew as a prank/in revenge lacks any real credibility.

late payment markers

Mr W submits that his overdraft was removed and the debt (caused he says by a transaction made to P) meant that his account was placed with the recovery team and until paid off, resulted in late payment markers on his credit file.

I have seen a court order in favour of Mr W and against P. Unfortunately, I have no way of knowing why judgement was entered in Mr W's favour and what, if any, findings were made by the judge. I also take into account that it wasn't just the payment to P which took Mr W into his overdraft – but also one of the disputed transactions which is the subject of this complaint.

Generally speaking, Santander is able to withdraw such a facility from its customer if it chooses to do so. And so Mr W's account was always going to be overdrawn in any event.

Santander has an obligation to record accurate information with regards a customer's credit file and I can see that it accepts that the recordings were not correct for a few months

despite its instructions. For this, it offered Mr W £50 and I agree that its response to this part of Mr W's complaint is fair and reasonable.

incorrect recording of account status

Santander accepted the adjudicators' view that the late correction of the account status on Mr W's credit file warranted a compensatory award of £100. I think this is a fair and reasonable outcome to this part of the complaint.

I know Mr W has made much of the successful court proceedings against P throughout the lifetime of this complaint. I have noted his comments but those proceedings play no part in my decision making as they are not part of the complaint against Santander and more importantly, I have seen nothing from those submissions which would assist me in making my decision.

So, taking everything into account, I think it is more likely than not that Mr W authorised these disputed transaction and that Santander has dealt with his complaint in a fair and reasonable way.

my final decision

My final decision is that I uphold this complaint in part. For the late correction of his account status, Santander UK Plc should pay Mr W £100 in full and final settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 December 2019.

Shazia Ahmed
ombudsman