

The complaint

Mr B complains that Santander UK Plc have held him liable for payments from his account that he says he didn't make or otherwise authorise.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In September 2022 Mr B was on holiday outside the UK. He says that his phone, Santander credit card and driving licence were lost / stolen, he reported this to the police and with his partner's help cancelled the credit card and blocked the phone. The police report Mr B has provided includes that the loss took place between 2.00am and 3.00am on 30 September 2022. He also says his Santander debit card wasn't stolen and was in his possession throughout.

Mr B says that when he returned from his holiday, he logged in to his online banking and saw that there had been payments from his account that he didn't recognise. These totalled around £3,000. The evidence from Santander shows that these payments took place between 11.05pm and 11.25pm on 29 September 2022. It also shows that for at least one of these payments, chip and PIN was used with the PIN being correctly entered.

When Mr B reported this to Santander, they investigated but ultimately held him liable for the transactions he was disputing. In summary they said there was no point of compromise for his card or PIN. Mr B complained and when Santander maintained their position, he referred the matter to our service.

One of our Investigators issued her opinion on the complaint and didn't recommend it should be upheld. She supported Santander's outcome. Mr B still disagrees and has asked for an Ombudsman to review his complaint.

What I've decided – and why

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 reached the same outcome as our Investigator. I know this will be disappointing for Mr B, so I'll explain why.

The starting position is that consumers are only generally liable for payments that they've authorised. So, I must decide whether Santander concluding that Mr B most likely authorised the payments he is disputing was fair and reasonable.

I appreciate Mr B's strength of feeling on this matter. But I hope he understands that clearly, I wasn't present when the payments took place, and so I can't know with 100% certainty

what happened. But I must base my outcome on the available evidence and arguments and make my finding as to what I think is most likely to have happened.

The last undisputed payment that required Mr B to enter his PIN was at 7.51pm on 29 September 2022, around three hours before the first disputed transaction. Beyond this, after the disputed payments there were further transactions made using the debit card that Mr B accepts were him. The first of these was at 1.11pm on 30 September 2022. And Mr B's testimony is that whilst his credit card had been stolen, he had his debit card throughout.

Firstly, I don't think it's likely Mr B's card was cloned as he alleges. It's generally accepted that a card's unique chip cannot be cloned. And even if it were possible, there would still be no plausible explanation as to how a third party could have known the PIN. In my opinion the passage of time after the last undisputed use, negates the likelihood of it having been observed and that being the point of compromise.

I also don't think it's likely that a third party took and then replaced Mr B's card. Had the debit card been stolen, and payments successfully made (utilising the available balance), it's implausible that a third party would then have been able to find Mr B and would have taken the risk of discovery whilst replacing the card. There is no conceivable benefit to them doing so.

I also don't think it's likely Mr B's stolen / lost phone had anything to do with the disputed transactions. This is because the evidence from Santander is compelling that the debit card itself was used. And secondly the timing of the disputed payments was before when Mr B told the police he lost / had his phone stolen.

Mr B has made much of the fact that one of the disputed transactions for around £987 is recorded by Santander as having been a contactless payment. As this is beyond the limit where contactless should work, he thinks Santander were at fault for allowing this. He also thinks Santander shouldn't have allowed the payments without conducting further checks, particularly due to the value and because he says they took him overdrawn.

Santander have explained that outside the UK, contactless payments over the set amount will also require the PIN to be entered, and their system shows this is what happened. So, I don't think there was an error by Santander as that payment appears to be contactless and PIN rather than chip and PIN. And as I'm supportive of Santander's conclusion that Mr B authorised the payments, I don't think they were wrong to process them without taking any additional steps. Or if they had taken further steps, that this would have made a difference.

Mr B has also suggested that Santander's decision was motivated by his gender and race. He's also provided media articles about victims of scams being refunded by their banks. Firstly, this isn't a case about a scam, Mr B's position is that he didn't make the transactions at all, not that he was tricked into doing so. And in any case, each complaint is considered on its own individual merits. And whilst I've taken account of what Mr B has said, I've seen no evidence to support that Santander's decision was influenced by his personal characteristics, and I don't think that is the case. It appears to have been based largely on the technical evidence and the lack of any point of compromise for the PIN.

Overall, I'm more persuaded by the technical evidence from Santander than Mr B's testimony. And I don't think the outcome Santander reached in holding him liable for the disputed transactions was unfair or unreasonable. As such, there isn't a reasonable basis upon which I can require them to do anything further to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 September 2023.

Richard Annandale
Ombudsman