

The complaint

Mrs T complained because Santander UK Plc refused to refund her for cash machine withdrawals which she said she didn't authorise.

What happened

On 25 April 2023, Mrs T contacted Santander. She said there were 35 withdrawals on her account from 23 November 2022 to 17 April 2023 which she hadn't authorised. The total was £4,090.

Mrs T said that she still had her card. She said that her son, who lives with her, has access to her card and knows her PIN, but that he hadn't made the withdrawals. Santander told Mrs T that all the payments had been made using her genuine card, and correct PIN, and there was nothing to indicate the card or PIN had been compromised. Santander also told Mrs T that the cash machines used for the disputed transactions were local to her home. So if she hadn't made the transactions, it looked as if it would be someone known to Mrs T, ie her son. Santander advised her to contact the police.

Mrs T wasn't happy about this. She also said that her statements hadn't been reaching her, and she'd had to ask on three separate occasions for her statements to be sent out. She said not getting the statements meant she hadn't been aware of what was going on, so she thought it was Santander's fault. Mrs T complained.

In Santander's final response to Mrs T's complaint, it said that it could see that Mrs T had contacted Santander on 6, 14 and 24 March 2023 asking for statements, saying that she hadn't had the normal monthly statements. Santander said it had issued copies of statements to Mrs T's registered address, and suggested she should contact Royal Mail about the missing original statements and the missing replacements which Santander had also sent.

Santander said that it had looked to see if Mrs T's card or PIN had been compromised. The disputed withdrawals had all been completed using Mrs T's genuine card and PIN. Mrs T had said she still had the card, and didn't have the PIN written down. Santander pointed out that Mrs T had confirmed she'd allowed a family member to use the card and had told them her PIN. But Mrs T had said he hadn't used the card because of his personal and health circumstances. Santander suggested that Mrs T should speak to her local police, and ask them to investigate, for example reviewing CCTV.

Mrs T wasn't satisfied and contacted this service.

Our investigator didn't uphold Mrs T's complaint. He noted that there were undisputed transactions in between the disputed ones. This meant that whoever made the disputed transactions had taken the card, then returned it, repeatedly. The investigator also said that an opportunistic fraudster would maximise their spending, whereas the many disputed transactions here were mostly £100 or less.

Mrs T had told our investigator that she normally kept the card in her safe, and only she knew where the key was. But the investigator said that someone known to Mrs T, and who had access to the home, might be able to find the key, take the card and later replace it.

The investigator also considered the statements. He accepted that Santander had sent them, and said that this again pointed to someone known to Mrs T being responsible. It was likely they'd been intercepting the bank statements, both originals and replacements, to stop Mrs T discovering the fraud. The investigator said he knew Mrs T didn't believe her son was responsible for the disputed transactions, but he was struggling to see how it could be anyone else. As Mrs T's son lives with her, he had the opportunity to access the safe, and take and replace the card, and Mrs T had told him her PIN, so he could do shopping when she couldn't get out.

Mrs T didn't accept this. She said Santander had lied about when she'd first contacted them about the statements, as she'd phoned them in January not in March. She said there was a cash machine nearer than the one used for the transactions. And she said she was fuming at what the investigator had said about it being her son. She said that was out of order because the investigator didn't know him. She said he would never do that, and he wouldn't be able to find the key to the safe. Mrs T said she also thought the card might have been cloned. The investigator explained that a magnetic stripe on a card could be cloned but a chip in a genuine card couldn't. She said no-one had ever used her card, apart from when she'd been in hospital. She said she was furious that the investigator had said it was her son.

As Mrs T wasn't satisfied, her complaint was referred to me for an ombudsman's decision.

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.

I'm sorry that Mrs T is so unhappy about what happened. My role is to look at all the evidence, and based on that, to decide what's more likely than not to have happened.

The technical computer evidence which I've seen shows that Mrs T's genuine debit card was used for the disputed transactions. Mrs T says that she thinks her debit card may have been cloned. It's technically possible for the magnetic stripe on a card to be copied, and cloned cards have been used for things like telephone or online transactions where the actual card isn't presented. But cloned cards won't work where a card is physically presented – for example in a cash machine – because the chip is read. Chip technology is complex and sophisticated and there have been no known instances when the chip in the card has been successfully copied. It's not generally thought possible to copy the chip on a card, and our service hasn't come across any cases where we felt this was a likely explanation of what happened. Here, all the disputed transactions were made at a cash machine. So any cloned card wouldn't have worked. So I find that the card used for the disputed transactions was Mrs T's genuine card.

Also, the evidence shows that Mrs T's correct PIN was entered by the person carrying out the transactions.

Mrs T's statements show that there were genuine transactions between the many disputed transactions. This means that whoever carried out the transactions would have had to have obtained Mrs T's debit card, which she says she kept locked in her safe, carried out the disputed withdrawals, then returned the card to the safe without her knowledge. This significantly restricts the number of people who could have carried out the withdrawals,

because they'd have had to have had regular access to Mrs T's home, without arousing suspicion. They'd also have had to have found the safe key.

I recognise that Mrs T strongly believes that it wasn't her son who carried out the withdrawals. And I can't say for certain whether it was or wasn't, because I wasn't there. But logically, if Mrs T didn't carry out the transactions herself, it must have been someone who had regular access to her home. If Mrs T had anyone else visit her home regularly – for example to help her with anything in the home – that might be a possible explanation. But if so, there's a logical difficulty with any such person being able to find out Mrs T's PIN, because she said she hadn't written it down and the only person she'd given it to was her son.

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. Importantly, Regulation 72 deals with the customer's obligations in relation to security, and says that a payment service user must:

"...take all reasonable steps to keep safe personalised security credentials relating to a payment instrument or and account information service."

Unfortunately, here, Mrs T disclosed her PIN to someone else, meaning her account was at risk.

I've also considered the missing statements. The computer records show that Santander did send them. It issued the original monthly statements and the copies when Mrs T requested them. It seems unlikely that the postal services didn't deliver any of these many statements, until after Mrs T had repeatedly complained. It's much more likely that whoever carried out the disputed transactions – who must have had access to her home – also intercepted the post so that Mrs T didn't become aware of the fraud. But whether it was the postal service or the fraudster whose actions resulted in Mrs T not receiving her statements, the evidence shows Santander sent them. So I don't find that Santander was at fault.

The key factors here are that Mrs T's genuine card was used, and her correct PIN. Mrs T says she was careful about her card, and kept it locked in her safe at home. She hadn't written down her PIN. And there were undisputed transactions between the disputed ones. So I can't see that there can be any other explanation other than that if Mrs T didn't carry out the transactions herself, it must have been someone with regular access to her home and knowledge of her PIN, who carried out the disputed transactions. So I don't require Santander to reimburse her.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 8 January 2024.

Belinda Knight
Ombudsman