

The complaint

Ms R complains that Santander UK Plc won't refund money that she didn't withdraw from her account.

What happened

Ms R says that she didn't make six cash withdrawals each for £200 from her account on consecutive days in February 2022. She says that she didn't have the PIN that would be required. And that she only realised what happened when she received an annual account statement in January 2023. She says she has shown that she'd been in a different location less than an hour and a half before the time of a withdrawal on one of the days.

Santander said it wouldn't be refunding this money. The withdrawals required the card on the account to be present and the correct PIN entered. Ms R was expected to keep the PIN secure and not disclose this to anyone.

Our investigator didn't recommend that the complaint be upheld. He agreed that the withdrawals required the card and PIN. And he thought it unlikely that if someone had obtained Ms R's card then they'd also have been able to discover the PIN. There was no point of compromise. He said that on 1 March 2022 Santander received a call verified as being from Ms R using voice biometrics. During that call Ms R reported the card used for the withdrawals ending with numbers '746 as lost. There was no recording of the call now given the time that had passed. But this showed that Ms R had been aware of the card. He'd looked at the information Ms R had provided about the time of her other shopping using a different bank card on 24 February 2022. But that didn't mean that she didn't consent to the withdrawals even if made by someone else.

Ms R didn't agree and wanted her complaint to be reviewed. She had provided proof that she was somewhere else before one of the withdrawals was made. She now thought she called about her lost card because she'd received a new card. Ms R said she didn't have a PIN and she doesn't know how the withdrawals happened. She said she didn't give her bank card and PIN to anyone. She wouldn't have travelled daily to a different area to take out money and she had caring responsibilities at home during the day.

My provisional decision

I issued a provisional decision on 20 November 2023. I set out below what I said.

I explained that I wouldn't be able to say *exactly* what happened, but I'd be thinking about what is *most likely* on a balance of probabilities. I needed to take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated, say with a card and PIN as here. And if they weren't authorised Ms R wouldn't generally be responsible for them.

So, I will be thinking about the following areas in looking at this complaint:

- What is the most likely explanation of what happened to the card and PIN used for these

payments?

- Did Ms R authorise the payments on the account including by allowing someone else to use the card?

I was satisfied from the information provided by Santander that the disputed payments were authenticated with the genuine card and the PIN. I needed to consider whether Ms R consented to and so authorised the payments.

Through our investigator I asked Santander for some more information about the card and the PIN and the activity on the account. It told me that the card used was a 'reissue' processed on 16 February 2022 and had an expiry date of February 2028. At the same time a PIN advice on the account was processed. The information is that these were sent separately to Ms R's correct address and were expected to arrive on different dates. The daily card cash withdrawal limit was then £300. Santander also provided entries on the account showing that the last one before the disputed payments other than interest was a transfer in early 2018.

As referred to by our investigator this card was cancelled on 1 March 2022, and I noted the time of call at just after 3pm. At first Ms R said she didn't remember calling to do this and asked for a recording. That isn't available. But the record of biometrics indicates it was made by her. I found it unlikely anyone other than her would have made that call as this stopped any further withdrawals being made with the card. I didn't have a record of any further attempts to use the card after that. There was no other new card issued than this one until the lost card was reported. And so, I thought that to know that the card was lost Ms R most likely had received it in the first place. Santander said that it would as a matter of course ask an account holder about any recent payments to see if the card had been misused. The withdrawals would have been visible on its system at that time. I also thought it likely that Ms R would be concerned about whether her lost card had been misused in some way. If she did want to make a claim I didn't see any strong reason why she wouldn't have made that then. And especially if these had been mentioned to her by Santander. Having said that I couldn't know exactly what was then discussed.

I took into account the pattern of payments. These were regular daily withdrawals of £200 in a location away from Ms R's home and between 1 and 3pm each afternoon. These started on 23 February 2022 and the last was on 28 February 2022. Ms R has provided information to show she wasn't in the relevant location around lunch time on 24 February 2022. That's not definitive but could be consistent with her not making that withdrawal herself. I didn't have reason to doubt what she says about her caring responsibilities at home. There was still a significant amount of money in her account when the lost card was reported.

Ms R is adamant she didn't have a PIN for the card. I didn't have any specific information to support it somehow being compromised for example through problems with her post or by someone with access to her property. I could see from the complaint investigation from Santander that it had asked her about why she might not have received the PIN but didn't note any explanation from her. If the PIN had somehow been intercepted before reaching her I'd still need to find that someone was able to obtain her card. And I'd expect her to keep her card safe as she said she did in what she described as a 'secret place' and not disclose her PIN to anyone and keep that safe too. She said that she didn't write her PINs for other cards down.

Assessment

I said I was going to consider what I thought are the two possible broad scenarios here:

The first is that Ms R consented to the payments. The information is that the card used and

the PIN were sent to her home. After not using a card on her account for years within days of these being issued her account was being used. She didn't pursue, or it seems ask about any misuse of her card at the time she reported the lost card because she'd consented to the payments. This may have involved her allowing someone else to use the card, especially on 24 February 2022. She later decided to make a claim only after her statement was issued.

The second is that Ms R's card was somehow taken from her even though she wasn't using it. The PIN was discovered possibly before it got to her address. A third party took money from the account daily until the card was blocked and may have thought that the daily withdrawal limit was £200. Ms R realised she no longer had the replacement card and reported it. She has been consistent in saying she never had the PIN. She didn't know about the loss or would have reported this at the time too.

I said that this was a finely balanced decision and that is why I was issuing a provisional decision with my reasoning to allow for any further evidence and comments. Neither scenario is impossible. On balance I didn't think that Ms R has shown a credible way in which both her PIN could be compromised, and her new card obtained by an unknown third party. I was satisfied she had that new card before reporting it lost and that it is most likely that any unauthorised payments would have been discovered at the time. I don't rule out her allowing someone else to have the card and PIN, but I thought she would be responsible for what that person did. On balance I provisionally found Ms R was aware of what had happened and consented to the use of her card.

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.

Santander didn't make any further comments.

Ms R said that she wanted someone to look at video or camera evidence to identify the person withdrawing the money. She asked why she would travel on six consecutive days to a location away from her home to make withdrawals when there were cashpoints in her area. And she said she wouldn't want to walk around with this amount of money in case it was stolen from her.

Given the time that has now passed I consider it unlikely that any CCTV footage is available. And it would be a matter for the relevant authorities to obtain any footage from a third party. I would also say that CCTV isn't always conclusive in determining whether there was consent given. And as I set out above I didn't rule out Ms R allowing someone else to use the card. I note what she says about carrying money. I took account of the pattern and location of the withdrawals in my provisional decision and what she'd already said about this.

Having reviewed the additional comments she has made I'm afraid that it doesn't change my assessment and for the reasons I gave in my provisional decision above. I find it most likely that Ms R was aware of what had happened and consented to the use of her card. I appreciate she will be disappointed by my findings and that I'm not requiring Santander to do anything further.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or

reject my decision before 29 January 2024.

Michael Crewe
Ombudsman