

The complaint

Mr S complains that Santander UK Plc won't refund payments which he has said he didn't 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.

On 8 March 2023, £250 was withdrawn from an ATM using Mr S's Santander debit card. And on 10 March 2023 a further £190 was withdrawn from an ATM outside a supermarket. He discovered the transactions when he was looking at his bank statement on his phone, which he checks once a week.

Mr S reported the matter to Santander, but it refused to refund the money. It said the ATM withdrawals were completed with no incorrect PIN attempts or a balance enquiry, so the PIN was evidently known by whoever made the withdrawal and there was no identifiable point of compromise.

Mr S wasn't satisfied and so he complained to this service. He explained he keeps his debit card in his wallet either in his trousers or in a drawer in his bedroom, and the PIN wasn't written down anywhere. He accepted his carers to use the card if he needed to withdraw cash and that they knew the PIN.

He explained that he paid for his shopping in the supermarket on 10 March 2023. His carer was with him when he went shopping, but he is certain he made no cash withdrawals that day and he doesn't think his carer would have taken money from him.

Santander commented that 23 minutes after the £190 withdrawal, a card payment of £83.80 was made at the same supermarket. It said that if Mr S was alone, he must have made the withdrawal, or it could have been someone he was with. It said both transactions were Chip & PIN verified and the PIN might have been written down or given to a carer/family member to make withdrawals on Mr S's behalf, which would mean he'd been negligent and potentially breached the T&C of the account. It explained that it has facilities in place for carers which weren't ever requested, and he didn't raise the matter with the police.

Having initially recommended that the complaint should be upheld, our investigator said that Mr S's carers knew his PIN, so either he made the withdrawals himself, or one of the carers did. She noted that he consents for the carers to withdraw funds on his behalf and even if they went outside the agreement, the payments were authorised by CHIP & PIN, so under the legal principle of apparent authority the payments were authorised by Mr S.

Based on the fact Mr S had said he didn't remember what had happened, he still had his bank card with him, and there were no failed PIN attempts, our investigator felt the first withdrawal on 8 March 2023 was most likely made by Mr S himself or he consented for someone to make the transaction on his behalf. She was therefore satisfied the withdrawal was authorised by Mr S.

She explained the second withdrawal was made at the supermarket ATM at 10.52 on 10 March 2023 and the payment he made inside the supermarket was at 11:15 the same day. She explained that Mr S had told her that when he goes to the shops, he withdraws money himself. He also said he doesn't have a clear memory of the events, so it was possible he could be mistaken about whether he made the withdrawals. So, she was satisfied on balance that he authorised the transaction.

Our investigator concluded that Mr S had consented for his carers to use his card under the rules of apparent authority so she couldn't fairly ask Santander to do anything to resolve the complaint.

Mr S has asked for his complaint to be reviewed by an Ombudsman.

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 conclusion as our investigator. And for largely the same reasons. I know he feels strongly about this complaint, and this will come as a disappointment to him, so I'll explain why.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply – like the issue around apparent authority, which has an impact on this complaint.

Mr S initially said he didn't make the two withdrawals, but he has since said that he can't really remember what happened due to the passage of time.

He has explained that he occasionally authorises his carers to withdraw cash on his behalf and that they know the PIN. Significantly, the ATM withdrawals were completed with no incorrect PIN attempts or a balance enquiry. He also accepts that he made a payment in the supermarket on 10 March 2023 and that he still has the debit card, which is significant because the second withdrawal was made 23 minutes before that payment.

The PSRs say that someone acting as an agent on behalf of Mr S can be treated as acting with apparent authority when making transactions on their account. Authority consists of two elements. The transactions must be authenticated, and Mr S needs to have consented to the payments being made.

I'm satisfied the payments were authenticated from the information provided to us by Santander. In other words, Mr S's genuine card details were used to make them. Mr S doesn't dispute providing his card details and authorising his carers to withdraw cash on his behalf prior to the disputed withdrawals, and there is no evidence that this consent was withdrawn.

Having considered all of the evidence, I think it's likely that Mr S made the withdrawals himself or one of his carers made the withdrawals with apparent authority, therefore I'm satisfied the disputed transactions were authorised.

Because of this, I'm satisfied Mr S authorised the transactions and so I can't fairly ask Santander to refund the money.

My final decision

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 S to accept or reject my decision before 10 January 2024.

Carolyn Bonnell
Ombudsman