

The complaint

Mr M complains that Santander UK Plc hasn't refunded disputed transactions on his account.

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 February 2022 a merchant started taking a regular payment from Mr M's account. In August 2022 Mr M noticed the payment and asked for it to be cancelled. By that point around £344 had been taken from the account.

Mr M then asked Santander to refund the payments. Santander reviewed the claim but decided not to offer a refund. It said that the first and second payments were authorised using Mr M's own mobile phone. Mr M remained unhappy, so he brought his complaint to this service.

Our investigator didn't think the complaint should be upheld. She said she wasn't persuaded the transactions were unauthorised so she couldn't reasonably ask Santander to refund Mr M. She said that based on Mr M's testimony she couldn't find a point of compromise on his account and that she was satisfied from Santander's evidence that the recurring transaction was set up using his mobile banking.

Mr M disagreed and has asked for an Ombudsman's review. He said the investigator was making an assumption that he authorised the payments and he doesn't use his Santander account on a daily basis, only for setting up standing orders and for savings so the disputed transactions were easily missed.

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.

Where the evidence is incomplete, inconclusive, or contradictory (as it is here), I have to make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

When considering what is fair and reasonable, I'm required to take into account relevant law and regulations; regulator's rules, guidance and standards, codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Broadly speaking, Mr M is responsible for any payments that he authorised (either by making them himself or allowing someone else to) and he isn't responsible for unauthorised payments. The relevant regulations to this effect are the Payment Services Regulations ('PSRs'), and I've considered these alongside the terms and conditions of Mr M's account.

The key questions for me to decide are:

1. were the payments authorised by Mr M; and
2. if they weren't, did Mr M fail with intent or gross negligence to comply with his obligations under the PSRs and/or the terms and conditions of his account?

To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the first two transactions were authorised using Mr M's registered device. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr M responsible for the disputed transaction or not.

Having done so, I'm not persuaded that it's more likely than not a third party has managed to take Mr M's phone and signed him up for recurring payments without his knowledge. Mr M has said that no third-party has access to his device or his online banking credentials. As a result, I'm not persuaded there is a reasonable point of compromise for both Mr M's device and his online banking details for these transactions to have taken place without him knowing.

The transactions also took place over a number of months which isn't typical behaviour of a fraudster who would normally try and take as much money from the account as quickly as possible. So - on balance - I'm satisfied Mr M either authorised or consented to all the disputed payments here.

As a result, I'm not going to ask Santander to do anything more.

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 M to accept or reject my decision before 21 August 2023.

Mark Dobson
Ombudsman