

The complaint

Mr U complains that Santander UK Plc won't refund transactions that he says he didn't make or otherwise authorise. He is also unhappy that they closed 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 March 2023 Mr U disputed transactions made on his Santander account which he says he didn't make or otherwise authorise. Santander declined to provide a refund and ultimately went on to close Mr U's account. Mr U complained and the matter was referred to our service. One of our Investigators didn't recommend that the complaint should be upheld. He thought Santander had acted fairly in the decisions they'd made. Mr U disagreed and asked for an Ombudsman to review his complaint.

In December 2023 I issued a provisional decision in which I said:

"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 overall outcome as our Investigator. But as some of my reasons are different, I'm issuing this provisional decision to give both sides a further opportunity to comment before finalising my decision.

On 22 March 2023 Mr U contacted Santander and said that his card had been taken a couple of days earlier and that there were transactions on his account that he didn't recognise. Santander's complaint response says that the disputed transactions took place between 20 and 22 March 2023 and totalled around £1,200.

Mr U has said different things at different times in relation to his complaint. One example of this is that he initially reported all the account activity from 20 March 2023 onwards as fraudulent and more recently he told our Investigator that he hadn't made any of the payments on his Santander account since 2022. Mr U also told our Investigator that he'd reported the theft of his card to Santander within an hour of it happening. But his initial report of this to Santander was on 22 March, two days after he says his card was taken.

Mr U has also described aspects of his health along with medication he takes which could in part account for the inconsistencies in what he's said has happened. The symptoms Mr U has listed include that he has problems with cognition, explaining his feelings and thoughts and remembering things. For these reasons, it is difficult for me to place a lot of weight on Mr U's testimony as reliable and credible evidence. Although I accept that this is likely due to his medical condition, rather than him being dishonest.

As such, I've looked to the other evidence that is available. Generally speaking, Santander should only hold Mr U liable for payments he's authorised. For a payment to be authorised it must be correctly authenticated (through the agreed process for making a payment) and

Mr U must have consented to the payment being made. Santander have provided evidence to support that many of the payments in dispute were correctly authenticated and on occasions this was through Chip and PIN. So, I think its most likely the payments were all correctly authenticated. But I must still consider whether Santander concluding Mr U consented to the payments was fair and reasonable.

Most of the disputed payments were to 'W', a merchant who offer gambling services that Mr U had previously paid. Of particular note are some calls that took place on 20 March 2023 between Mr U and Santander. In one of these calls, Mr U was asking about a credit he was due to receive back into his account from W. And the evidence from Santander supports that the credit was authorised at 11.30am the same day. Mr U clearly states during this call that he was in possession of his card when the credit was processed through W's terminal. He doesn't state that his card had been stolen and several of the disputed transactions (which are payments to W) took place earlier the same day. There is also a further call on 20 March 2023 in which Mr U is chasing an outcome to a previous disputed transactions claim he'd made, but again he doesn't mention that his card had been taken. I find the call recordings to be persuasive evidence. And these indicate Mr U was still in possession of his card at the time at least some of the disputed transactions were authorised.

Beyond this I've also thought about the way in which the disputed transactions took place and the pattern of spending. Most of it was with W (a merchant Mr U evidently had an existing relationship with) and other payments were for small amounts in shops local to the area where Mr U lives. One example of this being a payment for £0.65 in a convenience store, at a time when the account balance was several hundred pounds. This doesn't match the type of account activity typically seen when there is unauthorised account use. Where a dishonest third party has obtained someone's card and PIN they will commonly look to deplete the funds quickly to maximise their gain. Taking all the evidence into consideration, I don't think the conclusion Santander reached, which is that Mr U most likely consented to the payments he is disputing was unreasonable. So, I can't say they've acted unfairly when declining to provide a refund.

I've also reviewed the terms of Mr U's account; these allow certain circumstances in which Santander may decide to end their relationship with a customer. Specifically they say: "It is a condition that you do not act abusively, offensively or violently towards our staff... And if any of the above applies, you will be in breach of these Conditions and we can close your account on giving you immediate notice..."

During several of the calls I've listened to, Mr U was abusive towards Santander's agents and said some very unpleasant things. Following this, Santander took the decision to close his account. At the time Santander took that decision, Mr U had already informed them of his medical condition – this is supported by Santander's own records.

Given this, I would have expected Santander to have treated Mr U as potentially vulnerable and to have asked him how his medical condition impacts him and the way in which he communicates. I can't see that this happened. Had Santander asked, I think its likely Mr U would have shared his medical condition in the same way that he did with our service. And whilst Santander are entitled to (and should) protect their staff from abusive conduct, I think they could have explored other options such as making adjustments regarding how they would communicate with Mr U, before taking the decision to close his account.

So, I've gone on to think about the impact of Santander's actions on Mr U and whether I think they need to do anything more to put things right. And in the circumstances of this complaint, I'm not persuaded that there has been an impact on Mr U such that Santander need to do more. When reporting the loss of his card and the disputed transactions, Mr U declined Santander's offer to reissue a new debit card. He said this was because he

intended to close his account as soon as his disputed transactions had been investigated. So, I think it's likely Mr U would have followed through with what he said he intended to do. And as a result of this, even though I think Santander ought to have asked more questions and explored other options as a result of Mr U's medical condition, I don't think he has ended up in a meaningfully different position. Because of this, I'm not intending to direct that Santander needs to do more to resolve this complaint."

Both Santander and Mr U responded to my provisional decision to say that they had nothing further to add.

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.

As neither party had any further evidence or information for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

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 U to accept or reject my decision before 16 January 2024.

Richard Annandale
Ombudsman