

The complaint

The estate of Mr J complains that Santander UK Plc won't refund a number of withdrawals made from its account, which it says it didn't make.

What happened

The estate of Mr J says a number of different cash withdrawals made from Mr J's account between May and September 2019 weren't made by him. The withdrawals were for varying amounts between £50 and £300, totalling around £32,000 and were made at a number of different cash machines local to Mr J's address, at an airport and in Spain. There was also a cheque deposited into Mr J's account and a cash withdrawal made in branch.

Santander investigated the withdrawals but said it only had an obligation to investigate disputed transactions where a claim was raised within 13 months of when the transactions were made. It also said the withdrawals were all made using chip and PIN, with a card sent to Mr J's correct address. So it didn't agree to refund the withdrawals. It did offer the estate of Mr J £100 compensation for not addressing all the points raised in its complaint. The estate of Mr J wasn't happy with Santander's response, so referred its complaint to our service.

One of our investigators looked at the complaint and said they felt it was likely Mr J had either carried out the withdrawals himself or authorised someone else to do so, so they didn't ask Santander to refund them. The estate of Mr J disagreed, so the complaint has been passed to me for a 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.

Having done so, I don't think Santander needs to refund the withdrawals to the estate of Mr J. I'll explain why below.

Santander has said it only has an obligation to investigate disputed transactions where a claim was raised within 13 months of when the transactions were made. The relevant rules relating to this are the Payment Service Regulations, which say that a complainant is only entitled to redress if they notify the bank of the fraud without undue delay, and in any event no later than 13 months after the transaction took place.

The last disputed cash withdrawal was made in September 2019 and the estate of Mr J has said Mr J died in December 2020 and the issue was raised with Santander shortly after. Santander says paper statements for the account were being sent to Mr J's address so he would have been aware of the withdrawals and had more than a year to dispute them. I appreciate that we're no longer able to ask Mr J why he didn't dispute the withdrawals. But I don't think this, or anything else I've seen, means that it would be unfair for Santander to rely on the relevant regulations in not investigating the disputed cash withdrawals.

In any event though, Santander sent us enough evidence to investigate the withdrawals and so I've set out my findings in relation to that evidence as well, in order to address some of the points raised by the estate of Mr J.

Generally, Santander can hold the estate of Mr J liable for the disputed withdrawals if the evidence suggests it's more likely than not that Mr J made them himself or told someone else they could make them with his card.

Santander has said all the cash withdrawals were verified with chip and PIN. And as the withdrawals were all done at cash machines or in branch, I think it's likely this is correct and so Mr J's genuine card and PIN would have been used to make them.

But the relevant regulations say that this, on its own, isn't enough to allow Santander to hold the estate of Mr J liable. So I also need to think about whether the evidence suggests it's more likely than not that Mr J consented to the withdrawals being made with his card.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is most likely to have happened, based on the evidence I do have.

Santander has said Mr J's PIN wasn't changed since he was last sent a new one, so it's unlikely it was an easily guessable combinations of numbers such as a memorable date. And given the number of possible combinations, it's extremely unlikely someone could guess the PIN correctly. So I think it's likely whoever made the withdrawals knew the PIN.

Santander has sent us evidence that the card and PIN used to make the withdrawals were both sent, separately, to Mr J's correct address. And that the card was ordered in branch. So in order for someone else to have used them without Mr J's consent, they'd have had to either pass Santander's security procedures in branch to arrange for the new card and PIN to be sent out and then intercept both letters without Mr J or anyone else who lived at the address noticing. Or they'd have had to later find both the card and the PIN letter and make use of the card over a number of months, again without Mr J noticing. And I think it's unlikely a third party would have been able to do all this without Mr J noticing.

The estate of Mr J has mentioned a cheque deposited into Mr J's account and a subsequent cash withdrawal made in branch. But as this cheque appears to have been drawn on another account in Mr J's name, I don't think it would have been reasonable to expect Santander to have carried out significant further checks before processing these transactions.

The estate of Mr J has also said Mr J's age and medical conditions at the time mean he wouldn't have been able to make all these cash withdrawals himself, or to travel to Spain and make the withdrawals there. But Mr J doesn't need to have physically made the withdrawals himself for Santander to hold him liable, only to have consented to them.

And while the estate of Mr J has said the police are involved and some family members are the subject of a criminal investigation, I can only look at the actions of Santander.

As I said above, we're no longer able to ask Mr J about what happened and, together with the time passed since the withdrawals, this unfortunately means we're limited in the evidence we have available. I appreciate the arguments the representatives of Mr J's estate have made and recognise that my decision will come as a disappointment to them. But, based on the evidence I have, I think it's most likely Mr J consented to the cash withdrawals and so I don't think Santander needs to refund them.

Santander has offered to pay the estate of Mr J £100 compensation for not initially addressing all the points raised in its complaint. And I think this offer is fair and reasonable in all the circumstances. If this offer has not yet been paid and the estate of Mr J would now like to accept it, it should contact Santander directly.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr J to accept or reject my decision before 4 October 2021.

Alan Millward

Ombudsman