

The complaint

Mr A, as the executor of the estate of Mr X, complains that Northern Bank Limited trading as Danske Bank (Danske Bank) allowed funds to be fraudulently taken from the late Mr X's account.

What happened

Mr A says that cash withdrawals and in store purchases were made on the late Mr X's account, without his knowledge or his authorisation. These transactions happened while the late Mr X was hospitalised or incapacitated due to ill health, with some happening after he had passed away. The transactions all took place in early 2019 and total nearly £20,000.

Mr A contacted Danske Bank and asked them to refund the estate of Mr X for the value of the transactions. Danske Bank looked into the claim but declined to refund the transactions. They told Mr A that all of the transactions in question were completed with the late Mr X's genuine card's chip and PIN so wouldn't be refunded. They suggested Mr A contact the police if he wanted to pursue the matter further.

Mr A wasn't happy with Danske Bank's response, so he brought a complaint to our service.

An investigator looked into the complaint and didn't uphold it. They felt that based on the information it was most likely that the late Mr X had given his card and PIN to someone to use, so we'd consider the transactions to have been authorised by him. The investigator couldn't see that Danske Bank were aware of the possibility that the late Mr X may've been at risk of financial harm or that additional monitoring of his account was needed – as they weren't made aware of his health issues or any vulnerability.

Mr A didn't agree with the investigator's opinion and provided lengthy submissions explaining why. I've reviewed all of the submissions that Mr A has made on behalf of the estate of Mr X. The main points he's raised are:

- Mr A feels the transactions should be considered as unauthorised in line with the Financial Conduct Authority's Handbook.
- If the late Mr X needed funds from his account to cover costs etc. he could've written a cheque.
- The late Mr X told a family member that he "couldn't get the card off" the person he gave it to, however this wasn't mentioned to Mr A until after the late Mr X's passing.
- Mr A believes the person who had the late Mr X's card saw Mr X's Will before his passing and discovered they weren't included, so drained Mr X's account.
- Danske Bank don't have sufficient or robust monitoring in place.
- Mr A feels the late Mr X's wishes set out in his Will aren't being met, and that if he had wished for someone to have the funds in his account this could've been included in his Will.
- Mr A doubts that the late Mr X gave his card to the person they believe used it.

As Mr A didn't accept the investigator's opinion, the case was passed to me to review.

My provisional decision

On 7 November 2022, I issued a provisional decision explaining I was intending to reach a different outcome than the investigator and wanted to give both parties a chance to respond before I issue a final decision.

In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

Generally, Danske Bank can hold the late Mr X liable for the disputed transactions if the evidence suggests it's more likely than not that he made or authorised the transactions himself. In this case it's not in dispute that the late Mr X's genuine card and PIN were used to withdraw funds from his account. But the regulations relevant to this case say that is not, on its own, enough for Danske Bank to hold him liable. I also need to think about whether the evidence suggests that the late Mr X consented to the transactions being made.

Did the late Mr X authorise the transactions that are being disputed?

I will start by addressing the cash withdrawals that were made on the late Mr X's account after he had passed. While someone had and used Mr X's genuine card and PIN to make these transactions, the late Mr X was unable to authorise anyone to access his account once he had passed. This means that Danske Bank can't treat these transactions as authorised and should refund all the withdrawals made on and after 24 June 2019. This includes seven cash withdrawals which total £3,300. I appreciate that Danske Bank weren't aware of the late Mr X's passing until nearly a month later, but this doesn't change the position under the Payment Service Regulations with regards to the transactions not being authorised.

However, I agree with the investigator that it's most likely the late Mr X had authorised all of the disputed transactions made prior to his passing, based on giving his card and PIN to someone to use.

Unfortunately, we don't know the circumstances around the late Mr X sharing his card and PIN. However, we know the late Mr X himself referenced having given his card to someone to use, and we know that person was living with him up to the time he was hospitalised. As we have no testimony from that person, I don't know what the specific agreement was between them and the late Mr X. But it's likely they were involved in the running of the household and dealing with at least some of the late Mr X's expenditure.

Mr A has raised a number of points regarding the late Mr X's Will and what it says with regards to the distribution of his estate. But I have to consider the relevant rules and regulations in deciding whether the payments were authorised and whether Danske Bank can fairly hold the late Mr X liable for them. And, by giving out his card and PIN to someone to use on a regular basis, he has authorised their use of that card to complete transactions

on his account. Also, by sharing his card and PIN, the late Mr X breached the terms and conditions of his account by not keeping them secure. This would also allow Danske Bank to hold him liable for the transactions. On that basis, I can't fairly ask Danske Bank to refund any of the disputed transactions made prior to the late Mr X's passing.

I'm very sorry for Mr A's loss and understand this has been made harder by what happened with the late Mr X's account. Also, I appreciate that I have greatly simplified the points Mr A made in response to the investigator's opinion and I mean no disrespect in doing so. But that doesn't mean I haven't considered each and every point that Mr A has raised.

I know that Mr A will be disappointed, but I can only fairly ask Danske Bank to refund the cash withdrawals made on the late Mr X's account after his passing.

My provisional decision

My provisional decision is that I intend to uphold this complaint against Northern Bank Limited trading as Danske Bank and will ask them to refund the estate of Mr X for the seven transactions made on and after 24 June 2019 which total £3,300.

Responses to my provisional decision

Danske Bank responded saying they were prepared to accept the provisional decision, although they didn't agree that the liability shifted on the passing of Mr X and wanted it noted that they were accepting without admitting any fault on their part.

Mr A replied on behalf of the estate of Mr X and disagreed with my provisional decision, raising the following points:

- It's been assumed that Mr X shared his card and PIN with someone on a regular basis. But the use of the card and PIN are not confirmation that they were given by the late Mr X.
- Mr X was a longstanding cardholder and had a sharp memory, so it's unlikely the PIN was written down.
- There is no evidence that it was the late Mr X's original card that was used for the transactions.
- The reference to the late Mr X giving his card to someone else to use is inaccurate. The late Mr X told the family member that his card was at home. On that basis, how did the late Mr X breach the terms and conditions of his account, as he would've considered his card to be safe within his home.
- We haven't considered that the late Mr X's card could've been taken from his home, when it was confirmed that he wasn't going to recover.
- Danske Bank say they weren't aware of the late Mr X's hospitalisation, however that doesn't mean they can hold the late Mr X liable for unauthorised withdrawals.
- Danske Bank didn't advise the late Mr X on options to safeguard his account in the event of deteriorating health or hospital admittances.
- Mr A disagrees that the withdrawals could've been used for the late Mr X's benefit, as he had limited outgoings.
- Mr A suspects the branch staff knew about the late Mr X's health conditions, as he was regularly in the branch.
- Danske Bank should've spoken to Mr A regarding the death of Mr X, the loss of this

money and the impact on him as the executor of the estate.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

I appreciate that I've summarised a lengthy submission made by Mr A in response to the Provisional Decision. But I'd like to reassure him I have carefully read and considered all the points he made. Having done so, I intend to reach the same decision as I reached in my provisional decision, and I'll explain why.

Were the disputed transactions authorised by the late Mr X?

Mr A has raised a number of interlinked points relating to how I reached the decision that these transactions were "authorised" by the late Mr X – including questioning the evidence to support it.

Danske Bank provided evidence, which shows the transactions were completed by chip and PIN. This means that the chip in the late Mr X's card was read as part of the transactions, and the PIN was entered to authorise the transactions.

Mr A has highlighted that the late Mr X had a sharp memory and isn't likely to have written down his PIN. However, if the PIN wasn't written down, I can't see how someone could've correctly guessed his PIN in order to use his card - as the evidence provided by Danske Bank shows that the correct PIN was used. So, while someone may've been able to access the late Mr X's card (if he left it at home for safe keeping), this doesn't explain how they would've known what his PIN was.

On that basis, I think it's more likely than not that the late Mr X shared his PIN with someone in order for them to use his card and complete these transactions. Doing this means that the transactions would be considered as "authorised" under the Payment Service Regulations (PSR's). Also, by sharing his PIN with someone, the late Mr X breached his account terms and conditions which require him to keep his card and security information (in this case his PIN) safe. So, I'm satisfied that Danske Bank can hold the late Mr X liable and I can't fairly ask them to refund the transactions.

Is there any other reason Danske Bank should be asked to refund the transactions?

Mr A says Danske Bank would've known about the late Mr X's health conditions as he was regularly in their branch. However, I haven't seen any evidence that suggests Danske Bank were told, or had concerns, that the late Mr X lacked the capacity to manage his accounts. So, I can't fairly say they should've undertaken any additional checks or monitoring on his account.

I have also considered the pattern of the transactions that Mr A is disputing (in early 2019), which he says should've concerned Danske Bank as part of their normal account monitoring. But I'm not satisfied this is the case. In the last five months of 2018, prior to the disputed transactions, the late Mr X's account had around 20 to 30 debit transactions each month, with the monthly total value of those transactions ranging from £600 to £3,000.

In the first three months of 2019, this pattern continued with no significant changes. In April 2019, the number of debit transactions didn't significantly increase, but the value of the transactions increased to £7,000. These transactions were spread across the month, and there were no large one-off withdrawals. Also, the balance of the account wasn't drained with over £4,000 remaining in the account. The following month (May 2019) the transactions returned to the prior pattern. I'm not satisfied based on the account activity in April that Danske Bank should've been concerned that the late Mr X may've been the victim of fraud or intervened.

And, while Mr A says that the late Mr X had limited need for funds while he was hospitalised, it's not clear if any of these disputed withdrawals were used for Mr X's benefit. And, I wouldn't be able to fairly ask Danske Bank to refund transactions where that may've been the case.

Mr A has also raised concerns regarding the level of customer service Danske Bank have provided. He feels Danske Bank should've advised the late Mr X on options to safeguard his account in the event of deteriorating health or hospital admittances. However, I can't see that they were made aware that the late Mr X needed this support or guidance.

Mr A also feels Danske Bank should've called him regarding the passing of the late Mr X, the loss of this money and how it impacted on him as the executor of the estate. While I can appreciate that Mr A may've wanted a call, I can't comment on Danske Bank's procedures or processes. From what I've seen, they closed the late Mr X's account within days of being notified of his passing and followed the instructions they were given with regards to forwarding the funds to the estate. They also provided their initial response to Mr A's complaint within a couple of days of him contacting them, letting him know they wouldn't be refunding the transactions he was disputing. Based on what I've seen, I can't fairly say Danske Bank acted unreasonably in responding to Mr A in writing rather than calling him. I'm very sorry for Mr A's loss and I understand that he is going to be disappointed in this outcome. But I can't fairly ask Danske Bank to refund any of the transactions made prior to the late Mr X's passing. Danske Bank should however refund the transactions made on or after the late Mr X's passing (as agreed), which total £3,300.

Putting things right

To put things right Northern Bank Limited trading as Danske Bank should refund the estate of Mr X for the seven transactions made on and after 24 June 2019 which total £3,300.

My final decision

My final decision is that I uphold this complaint against Northern Bank Limited trading as Danske Bank and require them to compensate the estate of Mr X as set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of X to accept or reject my decision before 7 February 2023.

Lisa Lowe
Ombudsman