

### **The complaint**

Mrs G and Mrs H, on behalf of the estate of the late Mr S, have complained that Santander UK Plc won't refund transactions they say were unauthorised.

### **What happened**

Mr S passed away in 2022. Starting a few weeks after his passing, cash withdrawals were made from his Santander account at ATMs, over the course of about two months, until the account was drained. The total withdrawn was around £4,000.

Following this, the estate's representatives were told about Mr S passing away. They discovered the withdrawals and reported them to Santander.

Santander held Mr S's estate liable for the payments in dispute. It said the genuine card and PIN had been used. It felt this was a civil or criminal matter which it didn't have to take responsibility for.

Our investigator looked into things independently and upheld the complaint. Santander didn't agree, so the complaint's been passed to me to decide.

### **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.

Santander needs to be able to evidence that Mr S consented to the transactions, or that he failed to keep his account safe either intentionally or through acting with gross negligence. Otherwise, Santander has to refund the withdrawals.

Santander has not provided technical evidence to show how these payments were authenticated. So I'm not currently satisfied that the genuine card and correct PIN were actually used here. In any case, Santander can't hold Mr S's estate liable solely because the card and PIN were used – as above, the evidence has to support it being most likely that Mr S consented to the payments, or that he failed to keep his account safe either intentionally or through gross negligence.

As Mr S had passed away before the withdrawals were made, he was no longer in any position to consent to them. There's no evidence that he gave anyone else permission to use this account either – there were no other authorised parties on the account, and no one was making any payments on his behalf while he was in hospital. So based on the evidence and the balance of probabilities, I'm reasonably satisfied the withdrawals were unauthorised.

I've not seen any evidence which shows that Mr S failed to keep his account safe either intentionally or through gross negligence. Again, it's not certain whether his genuine card and PIN really were used. But even if they were, it's plausible that e.g. a known party may have gained access to them while looking after him or after he passed away. For example, they may have had access to his belongings and found the PIN advice from when he opened his account not long before, even if he kept it somewhere otherwise safe. As Mr S has unfortunately passed away, we can no longer question him to find out more.

Santander made arguments about this being a civil or criminal matter. But under the Payment Services Regulations, Santander is required to refund unauthorised payments, regardless of whether it thinks this is a civil or criminal matter.

Lastly, I understand that Mrs G and Mrs H found it stressful dealing with Santander. I should explain that I'm only allowed to award compensation for losses that the eligible complainant suffered, but not their representatives. So in this case brought by the late Mr S's estate, I can only consider losses to the estate – but not losses to the estate's representatives, such as any distress they suffered. So I can't comment on how Santander handled things for the representatives. I note that Santander offered £125 compensation for the way it dealt with them. The representatives questioned where this was paid to. I can see it was paid to the late Mr S's Santander account back in August. It can be accessed there.

### **Putting things right**

Santander UK Plc should:

- Rework the account to reverse all the disputed transactions;
- Pay simple interest on the resulting credit balance, at the rate of 8% simple a year, payable until the date of settlement<sup>†</sup>. This is to compensate the late Mr S's estate for the time it was without its money.

<sup>†</sup> If Santander considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell the estate's representatives how much tax it's taken off. It should also give them a tax deduction certificate if they ask for one. The estate may be able to reclaim the tax from HMRC, depending on its tax situation. That would be a matter between the estate and HMRC.

### **My final decision**

For the reasons I've explained, I uphold this complaint, and direct Santander UK Plc to put things right by doing what I've said above.

If Mr S's estate accepts the final decision, Santander UK Plc must pay the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 14 November 2023.

Adam Charles  
**Ombudsman**