

The complaint

Mrs U is unhappy that Santander hasn't refunded transactions made from her account which she says weren't authorised by her.

What happened

Mrs U agreed to have her daughter added to her account as a joint party some time in 2008 or 2009. This was so she could help her with the paying of bills and day to day expenses. But Mrs U says her daughter went on to make payments out of the account that she hadn't agreed to.

Mrs U has listed the transactions she's disputing. They were made between July 2009 and May 2017 using a mixture of debit card, cheque, and bank transfer.

Mrs U says she reported her daughter's spending to Santander several times over the years, but it only ever said it wouldn't be able to help. She's explained how she'd been frustrated by the bank's refusal to help, especially as she'd endured problems in other areas of her life. Mrs U has shared details of medical difficulties and disputes with employers. She's said everything together made it hard for her to find the energy or mental strength to pursue matters with Santander further.

The affected account was closed by Santander in 2020, though Mrs U isn't entirely sure why.

Mrs U brought her complaint to our service after Santander said there was nothing it could do to help.

One of our investigators looked at what had happened but didn't uphold Mrs U's complaint. He said that we couldn't investigate many of the transactions Mrs U had complained about because they had taken place so long ago. He explained our jurisdiction rules, setting out that we can't consider events that took place more than six years prior to the complaint being made.

He could see there was evidence of a complaint made by Mrs U on 5 April 2022. And so he did investigate the disputed transactions that had taken place within six years of that date. But he couldn't say Santander needed to refund them. He noted:

- the payments had debited Mrs U's account more than 13 months before her complaint was made, meaning – under the Payment Service Regulations – Mrs U wasn't entitled to a refund; *and*
- if the payments were indeed made by Mrs U's daughter they would have been properly authorised, given she was a named account holder.

Mrs U didn't accept the investigator's findings and so the complaint was passed to me for a final decision. Since the case has been with me, I've discussed the outcome with both parties.

I told both parties that I could see evidence of Mrs U raising the issue of disputed payments and the removal of her daughter from the account in June 2016. Given that is within six years of Mrs U raising a complaint on 5 April 2022, the issue is in scope for investigation by this service.

I asked Santander for more evidence to show what it did in response to that and it seems the bank wrote to Mrs U and her daughter but took no further action. I could also see that transactions continued to debit the account, despite a two-to-sign authorisation rule being put in place.

I explained to both parties I didn't think that was enough, given the nature of Mrs U's complaint. I said Santander ought to have done more to ensure it was safeguarding Mrs U. I also said that it appeared the transactions after June 2016 weren't properly authorised because the two-to-sign mandate hadn't been followed.

I went on to inform both parties of my intention to uphold the complaint in part, with Mrs U to receive a refund of all payments made after June 2016.

Mrs U felt she should be refunded more of her loss, maintaining that she'd complained about disputed transactions and her daughter's actions earlier than June 2016. Santander didn't respond and so I'm proceeding without any further information from it.

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.

I've confirmed in a separate jurisdiction decision which transactions are within scope for consideration and why. I'll not repeat that detail here. But I can confirm it is only transactions and bank actions from April 2016 that are subject to an investigation into the merits of the complaint.

I've already spoken to both parties about my intention to uphold the complaint here. That detail is covered in the background section of this decision. As I've received no further information or evidence that would lead me to alter that position, I'm going on to issue this final decision on the same grounds.

The rules most relevant to this complaint are the Payment Service Regulations (2009) – the PSRs. Broadly speaking, these state that an account holder is responsible for any transactions that have been properly authorised. Where transactions are unauthorised, the firm (Santander in this case) should refund the account holder.

There is also a requirement in the PSRs for an account holder to report unauthorised transactions quickly, and no later than 13 months after they debit an account. Should this timeframe not be met, the account holder is not entitled to redress.

I'm satisfied the evidence shows Mrs U did make the bank aware of her account dispute in June 2016. Santander said it sent Mrs U and her daughter a letter and changed the account mandate to two-to-sign. But I'm not persuaded that was enough in the circumstances.

Given what Mrs U has said about her complaint, it seems her daughter was abusing the position of trust she'd been put in. Mrs U has demonstrated various life events that meant she might have been considered a vulnerable customer. But there's no evidence to suggest Santander took appropriate safeguarding action.

It also appears evident that the two-to sign mandate wasn't adhered to, given transactions continued on the account without Mrs U's authority. Santander have provided nothing to show Mrs U was making these transactions herself, or otherwise authorising someone to make them. I'm not then persuaded that the transactions were properly authorised, and Santander ought to refund them.

Given there was an error on Santander's part, in terms of how the money was lost, I don't find it would be fair and reasonable for the bank to rely on the 13-month exclusion set out in the PSRs.

I'm aware there are other payments that are within the scope of this investigation. There were three transactions in May 2016 which we can consider. But as I've seen no evidence of the account dispute being raised until after that time, those transactions are to be treated as having been made by an authorised account holder. And so the bank acted fairly and reasonably in debiting the account, and not refunding Mrs U when she reported the loss.

The account in question was closed in October 2020. Mrs U says she was unaware of this, or where the remaining balance was sent. But the evidence does suggest Santander let Mrs U know about the closure and sent the remaining balance to one of her other accounts. Santander should provide Mrs U with a copy statement which confirms the credit reaching her account.

Putting things right

Upon Mrs U's acceptance, Santander should:

- Refund the payments from Mrs U's account that took place from June 2016 to account closure (totaling £612.50);
- Pay interest on that sum at 8% simple per year, calculated from the date of each payment until the date of settlement;
- Provide Mrs U with a copy statement showing the crediting of funds from her closed account to a different account in her name.

My final decision

I partially uphold Mrs U's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs U to accept or reject my decision before 4 March 2024.

Ben Murray
Ombudsman