

The complaint

The estate of Mr W complains Santander UK Plc's actions have allowed funds to be transferred to a third party that shouldn't have been transferred and have compromised its ability to recover these funds.

What happened

Mr W had a number of accounts with Santander including accounts in his sole name and accounts in joint names with his partner. He held investments too.

Mr W sadly passed away in September 2021.

Five days prior to his death Mr W executed his last will and testament which, broadly speaking, made provision for his partner to receive an income for a while and left the residue of his estate to his children. His will named several executors, including Mr W's partner and Mr W's son who I'll refer to as Mr S in the rest of this decision.

Mr S says that Mr W was incapacitated for almost a month before he passed away and that he spent time in hospital too. He says that he wasn't able to use a mobile phone, a computer or a remote control during this period.

Three days prior to his death Santander received an online instruction using Mr W's details and registered device asking Santander to sell his investments. Santander received further instructions nominating a joint account in Mr W's and his partner's names as the account into which the proceeds of sale were to be paid. Mr W's partner says that she had Mr W's authority to send these instructions and that they reflected his wishes. Mr S disputes this and has at points said that Mr W wasn't capable of giving this type of instruction at the time.

Santander sold Mr W's investments two days prior to his death and the proceeds of sale were paid into a cash account in Mr W's sole name before their intended transfer to the account that had been nominated. That transfer did not occur before Mr W passed away. Nor did it occur before Santander was informed Mr W had passed away. The proceeds of sale were transferred two days after deceased markers were applied to Mr W's accounts. Santander said until recently that the transfer was an automatic process and so didn't require any action on Mr W's part and that this was also why the transfers went through despite the markers having been applied. Santander has confirmed recently that the transfer did, in fact, require action on Mr W's part. The evidence suggests that Mr W's partner was the person who actioned the transfer.

In July 2022 Mr S contacted Santander to ask for information about activity on Mr W's accounts that appeared to have taken place after he'd passed away and before Santander was notified he'd passed away as well as activity that had taken place after Santander had been notified he'd passed away. Mr S said that this information was needed as it appeared Mr W's partner had transferred assets out of Mr W's estate that she had no authority to transfer, and that the estate was taking legal action to recover. Mr S says that Santander didn't respond to his requests for information in time and shortly before a mediation hearing it appeared Santander wasn't going to provide the information. Mr S says the estate, as a result, had to agree to bring its legal action against Mr W's partner to a halt and to agree not to take any steps in the future to bring claims against her. Mr S says that after the estate had taken this step Santander wrote to him to confirm that there was evidence that a fraud may have taken place. Mr S complained saying that Santander's failure to provide information in time meant the estate could no longer recover any funds from Mr W's partner. In other words, Santander's failure had caused the estate loss.

Santander looked into the estate's complaint and agreed that it could and should have done better. Santander offered compensation but said it wasn't otherwise liable. Mr W's estate complained to our service.

One of our investigators looked into Mr W's estate's complaint but didn't uphold it. That was mainly because our investigator didn't think the estate had made a loss. Mr S disagreed and asked for the estate's complaint to be referred to an ombudsman for a decision. So, it was passed to me.

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 recently issued a provisional decision saying that I agreed with the estate that it had made a loss in this case. And that I thought the fair thing to do in this case was for Santander to refund the money that had been transferred out of the estate and pay 8% simple interest from the date of payment until the date of settlement. I said that because I was satisfied:

- a) Santander had allowed Mr W's online banking details to be used to transfer the proceeds of sale of Mr W's investments out of the estate and into an account that was – at that stage – in his partner's sole name despite the fact that Santander had already been notified Mr W had passed away and had already applied blocks and a bereavement marker at least two days before; and
- b) Santander had failed to provide Mr S with the information he needed in a timely fashion so that he could take steps to recover that money meaning Mr S is no longer able to recover that money from Mr W's partner. That also means that the question of whether or not the sale of Mr W's investments and the disbursement of the proceeds reflected his wishes or not – and was something Mr W authorised or not – will probably never be answered.

I'd spoken to both parties before I issued my provisional decision and Santander as a result offered to refund £43,838.66 to the estate as a goodwill gesture – an offer I wasn't aware of at the time I issued my provisional decision. Santander didn't offer to pay 8% simple interest as it said its offer was a goodwill gesture.

Having spoken to Santander again, I agreed to put its offer to Mr S and see whether or not it fully resolved the estate's complaint. I did so. Mr S was happy with the offer but said that I ought to award interest given the length of time it had taken and all the mistakes Santander

had made.

Putting things right

Santander did the right thing offering to settle this complaint as it's clear it's made a number of mistakes and those mistakes meant money was paid out of the estate when it shouldn't have been. The estate hasn't spent years trying to recover that money from the third party who received it – though it did incur some costs and spent some time doing so. The question of whether or not the money should have been paid to that third party will probably now never be resolved. In the circumstances, I agree that any award I make should compensate the estate for the money it has been deprived of, for the time it was deprived of that money. That's one of the purposes of the 8% simple interest award we make.

Given what I've just said, I remain of the view that in order to put things right Santander should pay the estate £43,838.66 plus 8% simple interest from the date of payment to the date of settlement. So, that's the award I'm going to make.

My final decision

My final decision is that I'm upholding this complaint and require Santander UK Plc to refund the estate of Mr W £43,838.66 plus 8% simple interest from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr W to accept or reject my decision before 20 April 2024.

Nicolas Atkinson
Ombudsman