

The complaint

The estate of Ms H complains Santander UK Plc is refusing to refund several thousand pounds worth of unauthorised transactions. The estate of Ms H further complains Santander should have done more to protect Ms H's account.

What happened

Ms H sadly died in September 2023 with Mrs T named as the executor and sole beneficiary of her estate in her Will. Mrs T visited a branch of Santander to explain Ms H had died and completed the bereavement forms. Mrs T explained she realised several thousand pounds had been withdrawn from Ms H's account whilst she had been ill.

Mrs T explained there were unauthorised debit card and cash withdrawal transactions between 14 August and 9 September 2023. Towards the end of Ms H's life, including a period when she was in hospital, £300 was withdrawn regularly from cash machines (ATMs) which made up most of the disputed transactions.

Mrs T explained a named third party had obtained and used Ms H's card without her permission during this period. She explained this third party had assisted Ms H during the pandemic when she was isolating due to being medically vulnerable. Ms H had provided this third party with her card and personal identification number (PIN) during this time to help her to buy shopping and other items.

Santander wrote a final response letter to the estate of Ms H in November 2023. It explained it had systems in place to detect fraud, but the transactions in question had been completed using Ms H's genuine card and authenticated using chip and PIN. As such, these transactions could only occur if the person making the transactions had both the genuine bank card and knew the PIN.

Santander wrote to the estate of Ms H in January 2024 stating that as Ms H had previously provided consent for this third party to use their card, including telling the third party her PIN, Santander thought it was a civil dispute that should be pursued with the police or through court.

Santander explained PINs should be committed to memory and destroyed after being received, so that the card owner is the only person who knows the PIN. Santander highlighted its terms and conditions explain this. Santander also said that as the PIN had been divulged to a third party, it was outside of Santander's control.

Our investigator thought the evidence suggested the transactions were not authorised by Ms H and Santander should pay the money back to the estate. Our investigator thought the transactions were out of character for Ms H and the evidence suggested Ms H had provided her card and PIN under an 'apparent authority', explaining the provision of the card and PIN was under a specific instruction during a specific period, namely the pandemic.

Our investigator thought there was evidence the apparent authority to use the chip and PIN card had ended, explaining Ms H had used her card after the pandemic and an apparent authority is not open ended. They also thought there was a clear opportunity to explain a compromise for the third party to gain access to the card and make these transactions, as Ms H was vulnerable and towards the end of her life in hospital.

They therefore recommended upholding the estates complaint as they thought the evidence suggested, on balance, these transactions were not authorised by Ms H and Santander should refund them.

The estate of Ms H agreed with our investigator's recommendation. Santander rejected our investigators recommendation, pointing out seven cash withdrawals had been made for £250 between December 2022 and June 2023. It also asked for evidence the estate had raised the matter with the police, stating it still considered this was a civil dispute.

Santander were subsequently provided with details of the outcome of the investigation and correspondence from the criminal investigating officer in the case and an update regarding this investigation. However, it decided not to change its decision when provided with this information.

As Santander disagreed with our investigator's decision, this case has been passed to me to make a final 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.

Where evidence is incomplete, inconclusive or contradictory, I have to make decisions on the balance of probabilities – that is, what I consider is more likely than not to have happened in light of the available evidence and the wider surrounding circumstances.

I appreciate how strongly the estate of Ms H feels about this complaint. Although I may not mention every point raised, I have considered everything but limited my findings to the areas which impact the outcome of the case. No discourtesy is intended by this, it just reflects the informal nature of our service.

The relevant regulations here are the Payment Services Regulations 2017 (PSRs). In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So, the issue for me to determine is whether it was more likely than not that Ms H carried out the transactions herself, or whether she authorised someone else to carry out the transactions for her, which would be considered as authorising the payments herself.

Firstly, I am satisfied the disputed transactions were authenticated. This means the correct process was used to make the transactions. I do not think there is any dispute the genuine card was used with chip and PIN authenticating the transactions.

On balance I think Santander were correct in advising chip and PIN is a relatively strong method of authentication. It requires both the genuine physical card to be present and intimate knowledge of the PIN, which usually is only known by the account holder.

Therefore, such transactions often 'score' lower in terms of risk and do not often flag as potential fraud. Cash withdrawals from ATMs using chip and PIN is certainly not the most common form of fraud our service sees. Financial businesses all have their own security measures in place to detect fraud, based on risk and commercial decisions, for obvious reasons these are not made known to customers or the wider public and are also commercially sensitive.

Although the amounts became more frequent, they were relatively small. The highest transactions were only a few hundred pounds at most, rather than one large transaction, with the debit card transactions being for mostly small amounts.

For these reasons, I can understand why the transactions may not have triggered any fraud prevention measures from Santander.

The PSRs also require 'consent', not just authentication, to be provided for the transactions to be authorised. The issue therefore for me to consider is whether there is evidence, on balance, an unauthorised third party completed the form and procedures prescribed for giving consent, not Ms H.

Although Santander has pointed to its terms and conditions regarding the safeguarding of PINs, the PSRs do allow for someone to initiate payments on behalf of the consumer. This is called an agency relationship. In the situation described during the pandemic, Ms H providing a third party with her bank card and PIN as an informal agency relationship.

Again, I don't think this is in dispute by either party. What is in dispute between the parties is when, or if, this relationship ended, and whether there is or isn't sufficient evidence of apparent authority by Ms H for these transactions.

The key question for me to decide is, did Ms H do or say something that permitted the third party to undertake the procedure for giving consent for the transactions in dispute? I must also consider if there is evidence this authority given during the pandemic ended and thus whether these transactions should be considered unauthorised.

Firstly, I think on balance the disputed transactions were out of character. I have no reason to doubt Ms H was in hospital and very ill for this period. Interestingly, I think some of the smaller transaction corroborate this as they occurred in the hospital she sadly died in, including what appear to be small regular payments for parking which appear, on balance, to be linked to the hospital car park Ms H was being treated in.

However, other transactions at the same time such as most of the ATM transactions, occurred several miles away from the hospital she was staying in. I think on balance, considering the evidence, it is fair and reasonable to conclude Ms H didn't make these transactions and they were more likely than not made by the third party.

We now must examine the second part of this question, did Ms H consent to these transactions. I have not seen any evidence the estate found or recovered any of these funds from Ms H when she sadly died in hospital. Furthermore, I am satisfied Ms H was in hospital very unwell, it does not seem reasonable she was requesting daily cash withdrawals. Furthermore, I have not been provided with any evidence she benefited from these cash withdrawals and think if she required specific items purchased for her, it is more likely there would be evidence of specific debit card transactions with retailers for such items, rather than significant cash withdrawals.

Due to the circumstances, I do not think it is likely these funds were requested, received or authorised by Ms H.

I am also mindful Ms H had a Will in place which clearly defined who would benefit upon her death. I am therefore persuaded on balance, she would have been unlikely to have consented to, needed, or spent £300 cash per day during her last days in hospital. For these same reasons, I do not think she consented to the outlined debit card transactions during this period either.

To deal with some of the points Santander raised in its further correspondence following the view, apparent authority does not continue indefinitely once given. Generally, in circumstances such as this, where we are unable to ask Ms H whether she consented, we would consider her taking back possession of a card as ending the authority. There is evidence from the information we have, Ms H provided this authority for a specific reason during a defined time frame, I also note she was managing her finances and using her card for transactions and withdrawals herself after providing authority during the pandemic.

I have also considered the seven transactions over seven months Santander highlighted as showing Ms H did make cash withdrawals of a similar size. I agree with our investigator's thoughts here, these transactions show a very different pattern from the almost daily

withdrawals towards of Ms H's life. I therefore do not think, on balance, they support these transactions were authorised.

For these reasons, I am satisfied on balance the disputed transactions were more likely than not unauthorised. I therefore uphold this complaint.

My final decision

For the reasons I have given, my final decision is that I uphold this complaint. I require Santander UK Plc to refund the estate of Ms H £7,236.05 plus 8% interest simple from 3 January 2024 until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms H to accept or reject my decision before 2 December 2024.

Gareth Jones
Ombudsman