

The complaint

Mrs M says Santander UK PLC (“Santander”) refuses to refund her for unauthorised activity on her account.

Mrs M is represented in this complaint by her daughter, I will call her B for ease. And the complaint is regarding activity on the account carried out by Mrs M’s son, I will call him K for ease.

What happened

The facts of this complaint are well known to both parties, I won’t repeat them in detail here.

In summary, B says Santander allowed K to make card transactions, ATM withdrawals and cash cheques from Mrs M’s account without her authority. B says Mrs M is elderly and so can’t go out and take money out an ATM, nor does she make any payments online. B also says Santander should’ve realised that the number of cheques and the overall amount leaving the account was suspicious, and it should have done more to protect Mrs M.

Santander says it believes the cheques in question were properly signed with a signature that matches Mrs M signature from the initial account opening application. It also says the ATM withdrawals were made using Mrs M’s genuine card and PIN, and so was the card transaction which Mrs M thought was an online casino. And as Mrs M shared her PIN with B, he was deemed to have her authority to use her account. So, it hasn’t refunded any of this money.

Our investigator considered this complaint and decided not to uphold it. Mrs M’s representative wasn’t happy with this outcome, so the complaint has been passed to me for 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.

Before I set out my thoughts, I want to acknowledge that I have summarised this complaint briefly and, in less detail, than has been provided. I’ve focused on what I think is the heart of the matter. Please rest assured that while I may not comment on every point raised, I have considered it. I’m satisfied that I don’t need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this and reflect the fact that we are an informal service and a free alternative for consumers to the courts.

Generally speaking, Santander is required to refund any unauthorised payments made from Mrs M’s account. Those rules are set out in the Payment Service Regulations 2017. Mrs M’s representative said she didn’t carry out the transactions in dispute. So, I must give my view on whether I think Mrs M did authorise the transactions or not, or whether she gave someone else authority to authorise the transactions on her behalf.

This complaint centres around B saying K, who is her sibling, has taken money from their mother's account without her consent. However, there is evidence that K had been caring for Mrs M before B investigated her accounts. And Santander says it has been provided evidence from K regarding an agreement to make purchases on her behalf. I've also seen that K had access to Mrs M's card and she had given him the PIN. So, Mrs M could've been seen as giving apparent authority to K. While I understand there is an ongoing criminal investigation regarding this matter, I have considered the complaint against Santander and whether I think it has done anything wrong in this scenario.

B has provided copies of 85 cheques made out to K which she believes were forged and written without Mrs M's consent. She says some were completed with the wrong dates, no dates, and some cheques have her deceased father's name them. Santander says the cheques have been honoured correctly. It is satisfied that the signature on these cheques match the signature it took from Mrs M when she opened the savings account in 2017. And it has provided a copy of this application form for me to consider. However, I am not a handwriting expert, and I cannot say for sure whether these cheques were all signed by Mrs M or not. But from what I can see these signatures all look the similar, and I wouldn't have expected Santander to notice anything suspicious about these cheques when accepting them. And as Mrs M has been suffering from dementia and is now quite elderly, this explains why some cheques have incorrect or odd details.

B has questioned a separate transaction for £100 which she believes to be an online casino, and she says her elderly mother cannot make payments online. However, Santander has provided evidence that the transaction was completed using her genuine card and PIN in person. Having done some research, this looks to be a transaction on a machine, similar to an ATM. B has also questioned a number of ATM transactions on Mrs M's account which would also have been completed using Mrs M's genuine card and PIN in person.

I don't know whether Mrs M gave K her card and PIN, or whether these was taken from her things. Either way, I think it's fair to hold Mrs M liable for the chip & PIN transactions. I say this because if she had given K her card and PIN he is deemed to have "apparent authority" to use it, and there is no evidence she took steps to remove this authority. Alternatively, had she kept her PIN written down with her card, or kept her PIN letter and card together at home, my view is that this would amount to gross negligence in failing to keep her account security details secure. So, in either scenario I think it's fair to hold Mrs M liable, and I don't think Santander needs to refund these transactions.

B says Santander should've noticed the amount of spending increased significantly from around £8,000 to £11,000 per year, to then rising to around £55,000 in 2023. I have considered this point and I do agree the increase in the spending is substantial. So, I've considered whether I would've expected Santander to flag these, and the impact this would've had.

Usually we would expect large payments, perhaps international payments, or payments significantly out of character to be flagged. The cheques in question were each for a relatively low sum and as I said I don't think there was any indication these could have been fraudulent. Mrs M also didn't make use of online banking, and with such customers it's not unusual to see a large number of cheques being issued to pay bills or move money. The transactions happened gradually over the year, and so I don't think there was an immediate cause for alarm at any point during the period. So, I don't think Santander did anything wrong by not flagging these transactions.

I know this outcome will come as a disappointment. There is a lot of money in dispute here so I can appreciate this must be upsetting. My findings above have been made in relation to

Santander and whether I think it did anything wrong here or should've done something more. I understand the criminal investigation into K's use of Mrs M's funds is ongoing and I hope a fair resolution is reached through the criminal justice system. However, for all the reasons outlined above, I don't think Santander need to do anything further.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 12 March 2025.

Sienna Mahboobani
Ombudsman