

## **The complaint**

The estate of Mr M complains that Santander UK Plc repaid Mr M's unsecured loan from his current account before accounting to the solicitors dealing with the estate for the remaining balance in the account.

## **What happened**

Mr M held a current account and a loan account with Santander.

Following Mr M's passing, in February 2021 Santander received a completed bereavement instruction form from the executor of the estate. In the form, the executor gave permission for Santander to clear any outstanding debit balances from any credit balances in Mr M's sole name.

On 16 February 2021 Santander transferred £2674.48 from the current account to the personal loan account to clear the balance in full. The loan account was subsequently closed.

On 17 February 2021 Santander sent a letter to the executors confirming that the loan had been cleared. In the letter, Santander stated that if the executor wished to challenge the offset, they needed to do so within 14 days. No challenge was made. Santander also advised the executor verbally of the offset in a call made by the executor to the bereavement team on 22 February 2021.

The balance of funds in the current account was sent to the executors solicitors on 17 August 2021.

In January 2023 the solicitors acting for the executor contacted Santander and asked it to reverse the offsetting. Santander replied and said that it wasn't possible to do this.

In May 2023 the solicitors acting for the executor contacted Santander again and requested that the offset funds were returned so that the funeral, testamentary, administration and secure debts of the estate could be settled. Santander replied and said it was unable to reverse the offset as the transaction was carried out over 2 years ago.

The estate of Mr M brought the complaint to this service in October 2023. At that stage, Santander hadn't issued its final response.

Santander issued its final response on 2 February 2024. It said it hadn't made an error and that it had acted in line with its probate and bereavement procedures. Santander said that on 12 February 2021 it had received a bereavement instruction form from the executor giving them permission to make payment of the funeral costs and offset the personal loan. Santander confirmed that the offsetting was completed on 16 February 2021 and the executor was advised by letter and phone. Santander said the offset hadn't been challenged at the time and that it wasn't until January 2023 that the solicitors requested for the offset to be reversed. Santander said it was at a loss to understand why it took 2 years from being informed of the offsetting for the estate to request the release of the funds. Santander said it

had asked the solicitors to provide details of the costs it said would take precedence over the personal loan, but the solicitors hadn't been able to provide these. Santander said the case had been reviewed by management, but it was unable to release the funds. Santander acknowledged that there had been some delay in registering the complaint and offered £200 compensation as a goodwill gesture.

Our investigator said she didn't think Santander had acted unreasonably because the banks terms and conditions allowed it to set off any outstanding debts against funds held. The investigator said that Santander had set off the balance against the loan with the authority of the estate. She said she was unable to ask Santander to return the funds. The investigator said the offer of compensation for the delay in registering the complaint was fair.

The estate of Mr M didn't agree. The solicitors said that there were other debts in the estate which took priority pursuant to statute and said that in exercising a right of set off, Santander had acted contrary to statute. The solicitors said that Santander had repaid the loan on 16 February 2021 which was before it had written to the executor to advise they would be so doing. The solicitors said they were unable to finalise the estate whilst this matter was outstanding.

Because the estate of Mr M didn't agree, I've been asked to review the complaint.

### **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 can see that following Mr M's passing on 24 January 2021, Mr M's representative sent a completed bereavement instruction form to Santander. The form was dated 2 February 2021 and was signed by the representative. On the form, a paragraph stated as follows:

*"If there is an outstanding balance on a Santander credit card, unsecured personal loan or current account, we can clear what we can of the outstanding balance(s) before settlement is made from the credit balances held in any account held in the deceased customer's sole name. Are you happy for us to do this?"*

In response to this question the representative ticked the "Yes" box.

I can see from the records provided by Santander that the loan account was offset on 16 February 2021. Santander wrote to the representative the following day to confirm that the offset had been completed. The letter stated:

*"To help simplify matters for you we've used the funds from XXXX to repay the debit balance outstanding on XXXX. If you're happy with the action we've taken you don't need to do anything. Alternatively, if you'd like to discuss this with us please call within the next 14 days"*

I can't see anything to suggest that either the representative or the solicitors dealing with the estate contacted Santander within this 14 day period to query the set off. I can see that Santander released funds to pay the funeral bills on 21 February 2021. Santander's records show that the representative called them on 22 February 2021 to discuss matters relating to the estate but didn't query or challenge the loan offset during the call.

Based on what I've seen, the representative – by completing the bereavement instruction form in the way that she did – gave express permission to Santander to offset the loan.

Even if the bereavement instruction for hadn't been completed in this way, the bank still had a right of set off under the terms and conditions of the account. These state that the bank can move money between accounts if money (such as a loan, mortgage, credit card or overdraft) is due for payment.

I've taken account of what the solicitors acting for the estate have said. They have said that Santander has acted contrary to The Administration of Insolvent Estates of Deceased Persons Order 1986. I haven't seen any evidence to confirm that Mr M's estate is insolvent but I'm writing this decision on the basis that it is insolvent, as this is the specific legislation relied on by the solicitors acting for the estate.

I've reviewed this legislation. It sets out the obligations of a personal representative in administering an insolvent estate. It also sets out the order of priority when paying creditors. Whilst I agree that unsecured creditors (which is what Santander would be in this scenario) should not be paid ahead of secured creditors, funeral, testamentary and administration expenses and preferred debts, it isn't the case here that Santander has offset the loan without permission. The representative gave express permission for the offset on the bereavement instruction form. So, I can't fairly say that Santander has acted contrary to the legislation because it has acted in accordance with the representatives instruction.

I haven't seen any evidence here to suggest that Santander has attempted to administer the estate of that it has intermeddled in any way.

For the reasons I've given, I won't be asking Santander to reverse the offset.

That said, I can see that Santander failed to register a complaint when this issue was first raised with them. It has acknowledged that there was a delay and has offered compensation of £200 for the poor service. I think this sum is fair and reasonable in the circumstances.

### **Putting things right**

To put things right, Santander UK Plc must pay compensation of £200 to the estate of Mr M for the delay in registering the complaint.

### **My final decision**

My final decision is that I partially uphold the complaint. Santander UK Plc must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 13 December 2024.

Emma Davy  
**Ombudsman**