

The complaint

Mrs W has complained Santander UK plc allowed her son and daughter to withdraw money from her account without her consent.

What happened

A lasting power of attorney for property and financial affairs was registered by Mrs W acting as the donor in May 2024. Her daughter, Mrs R, and her son, Mr W, were her attorneys who were required to act jointly in undertaking her interests. The power of attorney was lodged with Santander, who held Mrs W's bank and savings accounts, in July 2024.

In September 2024 Mrs R and Mr W closed Mrs W's ISA account. The money was paid into Mrs W's current account and then transferred to Mrs R's account. When Mrs W discovered this, she complained to Santander as she believed they were required to check she consented to any transactions by her attorneys. Santander confirmed they'd acted in line with the provisions of Mrs W's power of attorney.

Mrs W brought her complaint to the ombudsman service.

Our investigator reviewed what had happened and the terms of the power of attorney. This confirmed Mrs W permitted her attorneys to act on her behalf as soon as the power of attorney was registered with Santander. She felt this meant that the withdrawals made by the attorneys were authorised under the terms of the Payment Services Regulations.

Very upset at this outcome, Mrs W has asked an ombudsman to consider her 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.

Having done so, I've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

It's worth stating that I can choose which weight to place on the different types of evidence I review, including technical evidence, provided by financial institutions along with complainants' persuasive testimony.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Mrs W's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves.

To help me come to a decision, I've reviewed the evidence Santander provided – which included a copy of Mrs W's power of attorney – as well as what Mrs W has told us.

Mrs W believes that section 5 of the power of attorney document requires Santander to obtain her consent to transactions conducted by her attorneys as she retains her mental capacity. Unfortunately this isn't the case. Mrs W chose to allow her attorneys to make financial decisions on her behalf as soon as the power of attorney was lodged with the specific box crossed. The wording at the start of this section states:

“While you have mental capacity you will be in control of all decisions affecting you. If you choose the first option” [as Mrs W did] “your attorneys can only make decisions on your behalf if you allow them to. They are responsible to you for any decisions you let them make.

“Your attorneys must always act in your best interests.”

I'm satisfied this is a directive towards the donor and not any financial institution.

I'm satisfied Mrs R and Mr W made the closure of Mrs W's account and transferred the funds under the terms of the power of the attorney. Therefore, I'm afraid the transactions were authorised in accordance with the PSRs. I can't fairly ask Santander to take any further action.

I don't dispute that Mrs R and Mr W may well not have acted in Mrs W's best interests and have potentially defrauded their mother. However – and I really understand why Mrs W will be so distressed about this – a power of attorney is open to financial abuse by familial members.

Mrs W has already told Santander that she wants the power of attorney to be removed from her record with them. I can see they've taken this action. She can contact the Office of Public Guardian who will assist if she wishes to appoint new attorneys. However, they are unlikely to investigate Mrs R and Mr W's actions.

Only the police will be able to take any action to investigate potential fraud and Mrs W may not wish to take that step.

My final decision

For the reasons given, my final decision is not to uphold Mrs W's complaint against Santander UK plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 7 April 2025.

Sandra Quinn
Ombudsman