

complaint

K is a limited company and its complaint is brought by its owner, Ms O. Ms O complains that Santander UK plc will not refund all the fraudulent transactions made on K's accounts.

background

Ms O was a UK resident when she opened business savings and current accounts with Santander for K. She subsequently moved abroad, and explains that she also travels frequently for her work.

Ms O says that she asked Santander to close the business accounts as she had no further use for them, but that it would not let her do that. She also says that she made a number of requests for the accounts to be paperless, and also for the correspondence address for the accounts to be altered to her overseas address, but that Santander told her that would not be possible.

After Ms O had moved abroad, money was transferred from the savings account into the current account and then drawn out through branch withdrawals and other card transactions. Ms O says that she was unaware of any of this activity and was shocked to discover that the money had gone. She considers that Santander is responsible for the loss, because its failure to act on any of her instructions enabled a fraudster to gain control of K's accounts and make the transactions.

Santander did not agree that it had been the cause of the problem. It said that Ms O had artificially avoided changing the address on the accounts because she knew that she could not hold the business accounts if she was no longer a UK resident and wanted to retain them. It said that it considered Ms O had been grossly negligent in her actions, but offered to repay the branch cash withdrawals that had been made.

Ms O did not feel that went far enough and so brought her complaint to this service where an adjudicator investigated it. From the evidence, the adjudicator felt that the offer Santander had already made to Ms O was fair in the circumstances.

Ms O did not agree and said, in summary:

- She did not change her contact address for HMRC to her accountant's address – this must have been done without her knowledge by her accountant. She was not on particularly good terms with her accountant and so would not have wanted to have her banking correspondence directed to his address.
- When she was moving abroad, the business banking adviser did not permit her to change her address. So, even though she made every effort, she could not change it from her existing address and was left with no option but to leave the UK address as the correspondence address for K's accounts.
- After the fraudulent withdrawals, she insisted on having her address changed and Santander agreed. The banking adviser helped her with that.
- She was not allowed to have a paperless option for the accounts, which does not reflect normal UK banking standards. This put her security at risk. She was not told that she had to close her accounts – if she had known that, she would have closed them before

moving abroad. As it is, her business banking adviser led her to believe it would be completely impossible for someone to access her accounts even if they received her letters.

- Santander should have had far more robust security arrangements in place, including tougher security questions, to protect K's accounts.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Santander does not offer business accounts to non-UK residents, and so there are no standard options available to enable a non-UK correspondence address to be registered on a business account.

I am satisfied that the relevant literature makes clear that business accounts cannot be held for non-UK residents. And, whilst I note Ms O's argument that she remained a UK citizen, that is not the same thing as being a UK resident.

Santander business banking managers are available to see in branches, but business bank accounts are all serviced through one business banking centre. That can be done by using the dedicated phone in the branch, as Ms O has done in the past when, for example, she moved from one UK address to another.

Ms O says that her business banking adviser told her she could not change the address on her accounts to an overseas address. That was correct – for the reasons I set out earlier. So I cannot see that the banking adviser misled Ms O on that point.

However, Ms O also says that the banking adviser specifically told her to keep her business accounts open, and also assured her that no one would be able to gain access to her funds. More recently, she has added that the adviser told her it would be completely impossible for someone to access the accounts even if they received her letters.

The relevant banking adviser has told us that she remembers Ms O but, because of the time that has elapsed, cannot remember exactly what was said in 2013. But the adviser clearly does not accept that she gave any such assurances.

Having given the matter careful thought, I find it highly improbable that the business banking adviser told Ms O to leave her accounts open, with all correspondence continuing to be sent to an old UK address, and provided specific assurances that this would be a safe way to proceed. I find, on a balance of probability, that the adviser told Ms O that she could not keep her business banking accounts if she ceased to be a UK resident.

Given that Ms O knew how to contact the business banking centre by branch phone, there was no reason why she could not have closed the accounts if she had wanted to do so – the adviser would be unable to carry out the closure for her there and then at the branch, but that is not the same as preventing Ms O from closing the accounts.

Ms O has said that the adviser left her with no options, as she could not change her address or get paperless banking (which required online banking registration using a UK address). But I can't see that this was unfair – the position was that, once she moved abroad, Ms O

would no longer be eligible to hold a business bank account with Santander. I am not persuaded that Santander had a duty to Ms O to provide a work-around so that she could hold and operate business bank accounts from abroad.

What then happened was that Ms O left the accounts open and moved permanently abroad, knowing that all correspondence relating to the accounts was going to her old rented address in the UK and that Santander did not hold an up to date address for her. She did not know who would be living at her old UK address in the future, and apparently made no arrangements for any of her post (or that of K) to be forwarded. She knew that K's savings account had a substantial amount of money in it.

In all the circumstances, I find that Ms O's actions were such that Santander is not liable to refund the fraudulent non-branch withdrawals that were then made from K's accounts. Santander has said that, because the fraudulent branch withdrawals were made in person and so were actively allowed by Santander staff, it is willing to refund those on a goodwill basis. Those withdrawals account for well over half the value of the total fraudulent transactions that were made and this seems a very fair settlement overall. I am not persuaded that Santander is obliged to do more than that.

Ms O has made the point that Santander registered her overseas address following the fraud. That happened because it allowed the change of address form to go through in error. So I'm not persuaded that it should have allowed the registration from the outset, as Ms O has argued.

my final decision

My final decision is that Santander UK plc must refund the branch withdrawals totalling £24,210.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O (on behalf of K) to accept or reject my decision before 14 December 2015.

Jane Hingston
ombudsman