

complaint

Mr M complains on behalf of the estate of the late Mrs M that Santander UK Plc disclosed personal information to an unauthorised person. He doesn't feel that Santander followed its own bereavement processes. He wants a full explanation.

background

Mr M tells us that he is the executor of the estate of the late Mrs M. He complains that Santander sent confidential information about the account of the deceased to a third party, who I'll refer to as E. He says it shouldn't have done this as he and another family member who I'll call C, are the named executors in the will. Although C has reserved her power to act as executor. This means in practice he is the sole person entitled to deal with the estate.

In his complaint Mr M said he advised Santander in April of the death of Mrs M. And provided evidence that he and C were the named executors. He observed that E had obtained a cheque from the account - as the undertakers required a deposit. He said he'd been led to believe this was acceptable practice. But he went on to complain that a further letter about the account had been sent to E - after he'd told Santander in April that he was acting as executor. He wanted a full explanation as to why such sensitive material had been sent to E - as she had no legal involvement.

Santander explained in its final response letter that it had been contacted by E, in February. And E had provided a copy of the death certificate (it also erroneously referred to a grant of representation). It confirmed E had signed an indemnity form and that it had provided information to E in good faith. It said it had followed the correct processes.

When Mr M contacted it in April he'd also been advised of the need to provide a grant of representation - which he'd done in the following December. When this was provided Mr M was sent the proceeds and the account was closed.

In later correspondence, in response to queries from Mr M, Santander told us it couldn't be certain as to whether E or Mr M was the rightful executor until the grant of probate was received. Its processes did not take a will into account - as it was not able to validate if a will was the most up to date. And it maintained it had correctly followed its processes through to the closure of the account and transmission of funds to Mr M.

Mr M was not satisfied with the explanations and complained to us.

The investigator did not recommend this complaint should be upheld.

She found that E had visited a Santander branch in late February. She'd informed Santander that Mrs M had passed away and provided a death certificate. And said she'd be acting as executor. She signed the indemnity form that Santander require as part of its processes and provided evidence of identification. She'd requested details of account balances and these were sent to her shortly afterwards. E was told a grant of probate would be needed to access account funds.

Some weeks later Mr M told Santander of Mrs M's death. And he advised that he and C were named as executors in the will - but C would not be acting at this time. He also was informed a grant of probate was required.

The investigator said that part of the process that Santander follows is - if its not received instructions after about nine months of being notified of a death - it writes to the executor or acting executor. As it hadn't received details of any grant of probate confirming Mr M as executor it wrote to E - as she'd signed the indemnity form. The information provided by Mr M in April did not override the indemnity form - which was why Mr M wasn't recognised as executor until the grant of representation was provided in December.

She noted that Santander had offered £100 compensation for the mistake in its original response - and she felt that was fair. But she wouldn't be asking Santander to do anything else as it hadn't made any other errors.

Mr M was not happy with this and asked that an ombudsman make the final decision.

my findings

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

It's fair to say that during the course of enquiries Mr M has widened the complaint from its original basis - and he acknowledges as much himself. That's not a criticism - I understand that this is a sensitive issue and has caused some distress within the family - at what is already a difficult time.

But I need to explain that whilst I consider all the evidence and representations made - I can't - in the interests of conciseness - deal with each one individually within a final decision. And some of the questions raised do not fall within my remit to answer. But I'll try to cover as many points as I can which are relevant to my decision.

Dealing with the death of a loved one is always a harrowing experience. And whilst I know nothing of the dynamics within the deceased's circle of family and friends - it's not unusual for disputes to arise. Sometimes this affects third parties such as banks - who have to have processes to administer any accounts a deceased person may have had. And whilst it's not my role to act as advocate for a business - it's inevitable that not all its policies may satisfy different individuals.

In this case Santander has its processes which require a grant of representation (probate) to be obtained before the release of funds over a set amount. Obviously this takes time and it's necessary in order to obtain a grant of probate that the executor (or presumed executor) has access to account details. So Santander has a policy in place, requiring an indemnity form to be signed and identity to be confirmed. This permits it to provide information to a person seeking to act. The Data Protection Act does not apply to the deceased - so disclosure of information would not breach that legislation.

It's important to understand that it's not for Santander to determine the validity of documents such as wills. So once E had signed the indemnity Santander was entitled to treat her as the person it should deal with - until a grant of representation naming someone else was produced. As this didn't happen until December I can't say Santander has done anything wrong in dealing with E up to that time. And it was made clear to both E and Mr M that funds wouldn't be accessible until the grant of representation was produced - so there was no risk to the funds in the account. The provision of a cheque towards funeral expenses is entirely normal and does not require probate.

I accept Mr M thinks that Santander's processes mean anyone could obtain access to personal account details. And that means there's something wrong with them. But I've no jurisdiction to tell a business what processes it should have in place. And the practical reality is that a bank is in an impossible situation. Nobody can be considered to be an official executor until a will enters probate. Yet in order to obtain the information required for that grant of representation - account details have to be disclosed. So it's entirely reasonable for a bank to accept as a potential executor someone who is able to satisfy it of their identity and family link. And it appears that E's original visit to the branch was a mutually agreed family arrangement to obtain the deposit for the undertaker.

So whilst I know it will disappoint Mr M - I'm in agreement with our investigator - and for the same reasons as she set out - that Santander has done nothing wrong - with the one exception. That refers to the error in suggesting that E had already obtained a grant of representation when clearly that was not the case. But the £100 offer seems to me a fair and reasonable resolution. And so I won't be asking Santander to do anything else.

In offering my condolences and despite the nature of my decision I hope the explanations offered go some way in helping Mr M towards closure in such sad circumstances.

my final decision

For the reasons given above I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M, on behalf of the estate of the late Mrs M, to accept or reject my decision before 15 September 2017.

Stephen D Ross
ombudsman