

complaint

Mr L complains that Santander UK Plc wrongly holds him liable for a debt that was created on his account by a fraudster, who used the account without his knowledge or authority.

background

Mr L held an account with Santander. In 2010 he moved away and forgot to tell Santander his new address. He moved again after that, and says he forgot about the account until he happened to notice an old bank slip amongst his belongings.

Mr L says that he made enquiries at Santander about the account and was told he had a small credit balance, which surprised him but which he assumed was money he had forgotten about. He had been intending to close the account, but says that he decided instead to ask for a new bank card to be issued to him and then used that to withdraw almost all the balance in the account by means of cash machine withdrawals.

Shortly after that, it became apparent that two cheques that had earlier been paid into the account had been deposited fraudulently. They were HMRC cheques payable to other individuals, and when the fraud was discovered Santander was notified and Mr L's account was debited with the amount of the two cheques. That created a debit balance on the account.

Mr L accepts that someone paid cheques fraudulently into his account, but says he was not involved with that. He also says that he does not recognise any of the numerous direct payments and counter deposits made into the account for the two years or so during which he had lost track of the account, and did not make any of the regular cash machine withdrawals made against the balance during the period.

He does not accept that Santander should hold him liable for the debt created by the reversal of the fraudulent cheque deposits, because he believes it should have made sure that the names on the cheques tallied before accepting them into his account.

Santander considered that Mr L should be liable for the debt, since the proceeds of the cheques had been withdrawn by someone using the cards which had been sent to Mr L at the address it had for him, and the PIN that it had originally sent to Mr L before he moved away. As Mr L had not told it of his moves, or reported his card or banking details lost or stolen, Santander did not accept that it should take responsibility for what had happened.

An adjudicator investigated the complaint. He noted that, during the period in question, 20 credits totalling over £7,500 were made into Mr L's account by a variety of methods, many of which appeared to be wages payments. He also noted that whoever had paid in the fraudulent cheques had done so using the original PIN that had been issued to Mr L when he was living at his old address and the new card that had been issued to his old address before he had told Santander that he had moved.

The adjudicator noted that Mr L had told Santander and us that he had put his Santander bank card, PIN, online banking details and the majority of his account paperwork into an envelope which he might have left behind at his old address, or which might have been stolen before he moved.

Overall, the adjudicator did not consider that Mr L had taken sufficient care and so did not recommend that the complaint should succeed. Mr L did not agree, and said (in summary):

- He believes he is close to finding out who fraudulently used his account, and would like to know who he should approach with his evidence.
- He accepts that he failed to let Santander know that he had moved, but it was not he who used the account.
- He had forgotten that he had the account, and does not know how he will be able to pay the debt.

An advice worker also wrote on Mr L's behalf, to say that Santander should not have allowed Mr L's account to be used by someone else and should have recognised that the cheques and other payments into the account did not match Mr L's name or signature. Mr L could not, in his view, be held liable for Santander's failure in that regard. If Santander chose not to check payments into and out of the account, it must also accept the consequences.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The activity undertaken through Mr L's bank account for the relevant period was by means of payments into the account mainly made directly through the banking system (which does not require a signature, and is applied purely by means of account number and sort code). There was also a significant number of withdrawals made through cash machines, which only required the card and the associated PIN. The fraudulent cheques were paid in using the card and PIN as identification.

Mr L has told us that he put his card, PIN, online banking details and account paperwork into an envelope which was either lost or stolen while he was at his old address, or was left there by him when he moved away. Either way, he accepts that he did not tell Santander that he had moved or that his card and all his security information was missing and compromised.

Having rediscovered his account and found – to his surprise – that there was money in it, Mr L does not appear to have made any substantive enquiry about the source of the money before drawing it out.

I have noted the reasons Mr L has given about why he did not tell Santander any of those things, and why he thought he could safely draw the money out. I have also considered the representations made on Mr L's behalf that Santander should not have accepted the stolen cheques into Mr L's account. I am not, however, persuaded that this means Santander must accept liability for the effect of the various transactions made on Mr L's account. I find that, in the circumstances, Santander is entitled to hold Mr L liable for the debt on the account.

Mr L has said that he may shortly be able to provide information about who he thinks used his account. That would not, in itself, alter my decision and I have no standing to investigate third parties. However, if Mr L has evidence that a specific person has committed a crime, then that would seem to be something he should report to the police.

my final decision

My final decision is that I do not uphold this complaint.

Jane Hingston
ombudsman