

complaint

Mrs R complains that Santander UK plc allowed someone else to make payments and to transfer money from her account, without her consent. She's lost more than £40,000 as a result. She's brought this complaint with the help of her daughter, Mrs H.

background

Mrs R sold the house she'd lived in with her late husband and moved into sheltered accommodation, which she rents from a housing association. She wasn't used to dealing with financial matters, so – with Mrs H's help – she opened a new account with Santander. Mrs H has explained that this would enable her mother to pay the rent for her flat and make transfers to help out her children and grandchildren – something she'd discussed with her husband before he died. The account came with a debit card.

Mrs H has also explained that her mother didn't need the new account for everyday use. She receives her state pension directly into a Post Office account, from which she withdraws cash for day-to-day expenses. She's used her Santander debit card a couple of times (which I'll discuss in my findings), but prefers to rely on cash.

Mrs R and Mrs H decided to set up online banking. Because Mrs R doesn't have a computer or an internet connection, they did that from Mrs H's home. She lives close to her mother, so the idea was that Mrs R could do anything she needed to when visiting her daughter and her family, and they would be able to help her.

Shortly after she opened the account, Mrs R changed her PIN from the one provided by Santander to a number she'd find easy to remember. The bank's records show too that online banking was used to set up three new recipients – Mrs H, her husband and her sister – although no transfers were made at that time. I'll discuss that in more detail in my findings.

A number of online payments were made from the account, which Mrs H says her mother didn't know about. She says too that the card was used without her mother's knowledge or consent – mainly for large cash withdrawals and for gambling transactions. Whilst some of the gambling was successful – in the sense that winnings were returned to the account by the betting companies – most weren't, and within a few months the account had been emptied.

Mrs H says that her husband admitted to taking the money from the account. Mrs R complained to Santander and to us. She said the account had been used without her knowledge, and that Santander should have alerted her to the unusual transfers and payments.

Our adjudicator didn't think it would be fair to make Santander return the money to the account. Mrs H didn't agree, however, so I've reviewed the case.

my findings

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, however, I've come to the same overall conclusions as the adjudicator did, and for similar reasons.

I should say first of all that I do understand how distressing this must have been for Mrs R, Mrs H and their family. It seems that Mrs H's husband has admitted that he took the money

in very unfortunate circumstances. And there doesn't seem to be any realistic prospect of getting it back from him. I'll discuss separately the online transfers and the card transactions.

online transfers

Mrs H has said that she helped her mother set up two payees on the account – herself and her sister. She doesn't recall setting up a third payee, but the bank's records indicate that her husband, Mr H, was added as a payee at the same time. On each occasion – as is usual when a new payee is added to an account – Santander sent a one time passcode to the mobile phone number registered to it. Whilst Mrs H didn't initially recognise the number used, she recalls now that it was her husband's number at the time. He was in the room when the payees were set up.

Once payees were set up on the account, the bank didn't send any further one time passcodes to confirm payments to them. So, anyone who had the log-in details could arrange transfers to any payee already set up on the account.

Mrs H has said – since the complaint came to us – that Mrs R isn't really disputing the online payments. That may however be based in part on her own view of the prospects of success, so I have considered them anyway.

The three payees were set up at the same time, using Mr H's mobile phone number. I think it's quite likely therefore that he was involved in that exercise and knew – or knew where to find – the security information needed to log into the account. That's understandable, since he routinely helped Mrs R out. There was no particular reason to think he might try to benefit from the opportunity presented by having access to the new account.

Mrs R arranged for paperless account statements. That meant she didn't get paper statements sent to her own address. To see what was happening on her account, she had to visit her daughter or go to a branch. So I can see why she might not have been aware of account activity.

The bank's records show that more than one computer has been used to gain access to the account. For example, it appears that a different computer was used when the three payees were set up and when paperless statements were arranged – even though on both occasions Mrs R had authorised access to the account. Other devices were used at other times. I think it likely therefore that Mr H had access to the account log-in details, and that Mrs R knew that. In the circumstances, I don't think it would be fair to make Santander refund the online transfers.

the card payments and withdrawals

It's not really in dispute that the genuine card was used to make the disputed card transactions – rather than a copy of it. And the correct PIN was used too – that is, the PIN Mrs R had chosen. When the disputed account activity was identified, Mrs R still had the card.

I accept that Mr H was responsible for the disputed card withdrawals and payments. And I think it's unlikely that he had Mrs R's permission to use the card in the way he did. But that doesn't mean that Santander should bear the loss arising from his actions. I need to decide what's fair here – and to do that I must consider *how* Mr H was able to use the card in the way he did.

Most of the card use was in a three week period in March and April, with a second group of transactions on a single day in May. But there had been some activity earlier in March as well. That included two small payments to stores, at least one of which Mrs R hasn't disputed. But they were made on the same days as disputed cash withdrawals – on the first occasion about three hours before and on the second about half an hour before. So there's an indication that Mrs R may have been in the vicinity when these withdrawals were made, even if she didn't realise what was going on.

As I've indicated, the main group of transactions took place over a three week spell. Assuming Mr H made them, he must have had the card all that time, or been able to take it from Mrs R almost on a daily basis without arousing any suspicion. Mrs H has indicated he would have had the opportunity to take it.

As well as the card, I need to consider how Mr H could have known the PIN. Mrs H says her mother could have changed it to something which could be easily guessed by anyone who knew her. I think there was probably some discussion among the family about changing the PIN – and probably sufficient that Mrs H would have known what it was. I've ruled out the possibility that he observed Mrs R entering the PIN herself though; that's because the disputed withdrawals started before Mrs R used the card for purchases.

On balance, therefore, I think Mr H was allowed a degree of access to the card and that he'd either been told the PIN or how to work it out.

should Santander have stopped the transactions?

Mrs H says that Santander's systems should have identified unusual activity on Mrs R's account and taken steps to prevent it. Where their customers are victims of fraud, banks may find that they have to bear the loss that results. To protect both themselves and their customers, therefore, they have fraud detection systems. It doesn't follow though that they have to, or that banks are always responsible when those systems don't pick up unusual or suspicious activity.

With the benefit of hindsight, the account activity isn't perhaps what would be expected of someone like Mrs R. But the bank has pointed out that the genuine card and correct PIN were used – making it less likely that a thief was involved – and that, after a while, the transactions weren't unusual.

It was some months before the disputed transactions were reported. That's not a criticism of Mrs R or Mrs H, and Mrs H has explained why they didn't feel there was any reason to keep a close eye on the account. But it may help to explain why the bank's fraud alert systems weren't triggered. The card and PIN were used to make a number of gambling transactions and cash machine withdrawals in the first week of March. Santander wasn't told there was any problem. So, when something similar happened later that month and subsequently, it might have appeared normal for that account.

Overall, therefore, I don't think I can fairly say that Santander should have stopped what happened here.

conclusions

It wouldn't be right to refuse a refund here simply because the disputed transactions were made by a family member. That's not the right approach and it's not the one I've adopted.

Rather, I've looked at how that family member came to have access to the online account and card – so I can decide what's fair and reasonable. Having done that, I think it's likely:

- Mr H was given reasonably free access to the account online and was involved in the setting up of the three payees.
- He knew (or was easily able to work out) the PIN, and that family members would have known that.
- Mrs R probably knew he had the card, even if she didn't know he was using it for his own benefit.

As I've said, this is a distressing and upsetting situation for all concerned. But, having considered everything very carefully, I don't believe it would be fair to make Santander refund the disputed transactions in this case.

my final decision

My final decision is that I don't require Santander to any more to resolve this complaint. It's paid Mrs R £150 in recognition of some failings in the way it handled matters, but I can't fairly make it do any more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 15 July 2016.

Michael Ingram
ombudsman