

The complaint

Ms B, as executor, has brought a complaint on behalf of the estate of the late Ms S, about Santander UK Plc not refunding transactions which Ms B says were unauthorised.

What happened

Ms B has explained that Ms S was housebound, so between 2019 and 2023 Ms S allowed her ex-partner to make payments for her. Ms S lent the ex-partner her card and told him the PIN so that he could shop for her.

However, Ms B points out that there were numerous cash withdrawals in that period in addition to the shopping, totalling about £11,000. She says Ms S would not have needed cash and would not have wanted the ex-partner to withdraw that. Ms B says the ex-partner intercepted Ms S's post so she wouldn't see her statements.

Ms B also says Ms S sent the ex-partner money which she shouldn't have done. For example, Ms B says Ms S gave the ex-partner £5,000 to pay for a funeral plan, but says he did not spend it on a funeral plan.

Santander did not think it was liable for the disputed payments.

Our investigator looked into things independently and didn't uphold the complaint. They explained that by giving the ex-partner her card and PIN in the way she did, Ms S had given him the apparent authority to make the subsequent payments – even if she didn't intend for him to make those specific withdrawals.

Ms B appealed, so the complaint's been passed to me to decide.

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.

Broadly speaking, Santander can hold Ms S's estate liable for the payments in dispute if the evidence suggests that they were made with Ms S's authority.

I should explain that in this complaint between Ms S's estate and Santander, I can only consider the dispute between Ms S's estate and Santander. I cannot consider the separate dispute between Ms S's estate and the ex-partner, over which I have no jurisdiction. So that means I cannot resolve Ms B's claims about things like the ex-partner not paying for a funeral plan when he said he would. As it is not in debate that Ms S willingly paid him that £5,000, that was definitely authorised, and Santander have no liability for refunding that. I'm afraid that matter is a civil dispute between the estate and the ex-partner, which would need to be resolved between the two parties directly. It is outside the remit of our service.

Turning to the cash withdrawals in dispute, I need to note that Ms S never raised any concerns about them herself. And having listened to Ms S's calls with Santander, it looks like she would've been aware of them at the time.

For example, in a call in June 2022, Ms S confirmed her credit balance as being about £20, and checked that her overdraft was available for her to spend. By this point, there'd been about £10,000 of since-disputed cash withdrawals. So as Ms S was aware of her balance, if it was about £10,000 lower than it should've been, then it's most likely she would have raised concerns at the time.

Similarly, in a call in July 2022, Ms S reported that she'd received a suspicious spam call, so Santander checked that the latest spending on her account – at her local supermarket – was her. This was the same supermarket where the cash withdrawals predominantly took place. Ms S confirmed that she'd authorised this spending, explaining that her ex-partner would take her round the shop in her wheelchair. So it sounds like Ms S was often present when the spending was taking place. And she had no concerns about her recent account activity.

In August 2022, Ms S explained to Santander that she hadn't received her last month's statement, which was unusual for her as she'd otherwise been receiving her statements monthly. She ordered another copy of the last month's statement. So it appears that Ms S had in fact been receiving her monthly statements as usual, and it appears that if she didn't get one, she was willing to call the bank and get another copy.

This all suggests that Ms S was most likely aware of the activity on her account. And she didn't tell Santander anything was wrong with that activity. So it doesn't seem particularly likely that her account was being used without her consent.

I should also note that even before her ex-partner became involved in 2019, Ms S withdrew cash at much of the same locations for similar amounts. Indeed, she actually withdrew much more cash in 2018 than in subsequent years. So the disputed withdrawals were not out of character for her account. They were in fact made at a slower rate than previously.

However, even if I accept that Ms S did not intend for her ex-partner to make the disputed withdrawals, I'm afraid I still could not hold Santander liable for them.

Essentially, under the relevant rules, if you willingly hand control of your account over to someone and ask them to make payments on your behalf, then they are effectively acting as your agent. And you are then responsible for *all* the spending they make during the period they had your authority to use the account – even for spending which you might not have asked them or wanted them to make.

So when Ms S gave her ex-partner her card and PIN, and gave him permission to spend on her behalf, she was then responsible for all the payments he made during that period, including the cash withdrawals – even if she didn't tell him to make those withdrawals. Under the relevant rules, those withdrawals are considered as authorised – after all, they were made by someone who the accountholder had authorised to use their account. And by giving her physical card away, along with the secret PIN which only Ms S was supposed to know, it meant that Ms S allowed the ex-partner to bypass the security of her account, so to Santander it would have looked like it was Ms S herself authorising the withdrawals.

As these withdrawals are considered as authorised, I cannot hold Santander responsible for them. I appreciate that Ms B strongly disagrees with this, and I do understand that she thinks things should work differently. But nonetheless, I'm afraid this is the way it works.

I also appreciate that Ms B feels Santander should have blocked the withdrawals. But as I noted above, to Santander's systems it would have looked like it was Ms S herself who was authorising them, being made with her genuine card and the correct PIN. And the starting point in law is that banks are expected to process payments which they've been authorised to make. I can't see that Santander were given sufficient cause for concern by Ms S. And as discussed before, it looks like Ms S let them know she was aware of her account activity, and she even confirmed recent activity as being genuine. The withdrawals were spread out over a very lengthy period, averaging about two withdrawals a month, and were broadly in line with Ms S's previous genuine spending, which had even been higher. Ms B also made arguments about the Banking Protocol, but that's relevant to branch interactions; I'm afraid it's not relevant to these ATM withdrawals. I have not found that Santander needed to block these payments.

So for the reasons set out above, I cannot hold Santander liable for the withdrawals in dispute. That means Santander do not need to refund them. This is a difficult message for me to give, and I know it's a difficult message for Ms B to receive. But given the evidence and circumstances at hand, I'm unable to reasonably reach any other conclusion.

My final decision

For the reasons I've explained, I don't uphold this complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms S to accept or reject my decision before 12 December 2023.

Adam Charles
Ombudsman