

The complaint

Mr and Mrs S complain that Santander UK Plc restricted their account unfairly and they discriminated against Mr S due to his age.

What happened

Mr S visited a branch of Santander to make a large cash withdrawal, which he says he's regularly made every three months for a number of years. Mr S says he was asked for the reason for his cash withdrawal, but as he resented the question, he refused to answer this. Mr S says he was told that the questions were being asked in line with Santander's new law, but he refused to comply and informed the staff member he would return to collect the money and close his account. He says that he was told to wait 48 hours to return.

The following day, Mr S received a call from Santander, wanting to know the reason for the withdrawal. Mr S refused to answer the question. On 8 July 2021, Mr S returned to the branch to withdraw the funds and to close the account. He said he was subjected to a one hour wait while a member of staff attempted to speak to their security team to release the funds. Due to the time being taken, the staff member suggested to Mr S to return home and they would contact Mr S when the permission had been granted to release the funds.

Mr S received a phone call later that afternoon to inform him his funds were ready to collect. Mr S said that during the call, he reiterated that he was not prepared to attend the branch and then be asked further questions. Mr S says the call handler assured him the process would be brief and efficient, however, when Mr S returned to the branch, he said he had to wait for another hour and they refused to release the funds. Mr S says he was informed that Santander had restricted his account.

Mr S contacted Santander the following day to enquire why his account had been restricted, but he says the call handler didn't know why. Mr S made a complaint to Santander. The restriction was lifted on 13 July 2021, when Mrs S showed Santander staff her passport and told them the reason for the withdrawal.

Santander did not uphold the complaint. They said that in this particular instance, they had no alternative, but to suspend the account as Mr S refused to assist Santander. They said they needed to follow certain legal and regulatory obligations and it was not always possible to provide customers of an explanation for the reasons for an account being suspended, or to give a timeframe of the completion of their investigation.

Mr and Mrs S brought their complaint to our service. Mr S said that Santander discriminated against him by not releasing the funds to him and said they showed ageism, as they released the funds – and allowed an increased cash withdrawal amount – to Mrs S who is younger than him, based on a simple explanation she gave them – and their staff did not ask her for proof of her reasoning.

Our investigator did not uphold the complaint. She said that Santander had acted within their terms and conditions by restricting the account. Mr S asked for an Ombudsman to review their complaint. He made a number of points, in summary he said he faced a number of

financial difficulties when his account was suspended for seven days, he had never been subjected to interrogation from the staff when he had previously attempted to make the same withdrawal, Santander showed ageism by allowing the younger Mrs S to withdraw the funds but not himself, Santander contravened his rights by restricting the account and not giving him a reason for why they restricted the account.

Mr S also added that Santander had wasted his time by being asked to return to the branch on two separate occasions, with the understanding that his money would be ready for collection, only to leave empty handed with no explanation for the reason he was unable to access his money. Mr S said the time he had spent on the phone with Santander was increasingly exasperating and he said their telephone complaints are impossible to navigate.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

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

Mr and Mrs S have made a number of points to both Santander and this service and I've considered and read everything they've said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the crux of their complaint in deciding what's fair and reasonable here.

I've considered what Mr and Mrs S have said about how their complaint was handled by Santander and the telephone complaints service being impossible to navigate. But as complaint handling is generally not a regulated activity, it falls outside of my powers to rule on how a business handles their complaints procedure.

I've considered what Mr S has said regarding Santander not releasing the funds to him is based on age discrimination. I must make it clear to Mr and Mrs S that discrimination is a matter of law, set out in the Equality Act. It's for the courts to make findings on matters of law, and it wouldn't be appropriate for me to make a finding that Santander acted in breach of the Act. Although I am required to take law into account, if it's relevant, in deciding what's fair and reasonable in the circumstances of a complaint.

Here though, I'm satisfied that Mr S was treated fairly in his original interaction with the branch and I'm not persuaded that Santander contravened his rights by restricting his account. I say this as although Mr S was unable to withdraw the funds, Santander have regulations that they need to follow. One of these is ensuring their customers are not a victim of a scam – regardless of their age.

While Mr S has said he regularly makes this withdrawal every three months, I wouldn't expect all of the branch staff to be aware of Mr S's regular withdrawal patterns. But even if they were, I'm satisfied they were still entitled to ask Mr S the reason for his withdrawal – and they could deem it suspicious or that pressure was being applied to Mr S to make a withdrawal when he wouldn't provide a reason.

It may help to explain to Mr and Mrs S that new scams occur frequently and therefore staff may be aware of a similar scenario of a regular customer frequently withdrawing cash from the counter, only to have been victim of a scam. So I don't think it's unreasonable for Santander to try and protect their customers here. While there wasn't a new "Santander law", Santander are required to be aware of scams and ask questions to safeguard their customers against scams and fraud.

The terms of Mr and Mrs S's account explain that Santander has the ability to "refuse a

payment instruction" if "it may place (Santander) in breach of any legislation or law or (they) reasonably suspect that it may result in any regulatory action against (them) in any jurisdiction". Their terms and conditions do allow them to not specify the reason to refuse a payment instruction in certain instances also.

So I think it was fair for Santander to want to perform some checks to make sure this was a genuine transaction in the circumstances. That would, of course, cause Mr S some inconvenience – as it would any customer. But that's not to say that Santander wasn't entitled to perform further checks – I think they were and I think they did so fairly.

I'm persuaded the reason that Santander lifted the restrictions on the account was because Mrs S explained to the staff what the withdrawal was being used for and not based on her age compared to Mr S. While Santander did not ask for proof of the reason given, I'm satisfied this is because they believed the reason Mrs S gave them was genuine and they didn't need to see proof of this. I can't say Santander treated Mr S differently as he had never given them a reason for the withdrawal.

I've considered what Mr and Mrs S have said about not being subjected to these questions before. But I've been provided system notes from Santander which confirm that on 22 April 2021, when a £5,000 bill payment was being attempted, that Santander asked them questions to find out if the transaction was a scam. So I can't agree that they've never been asked these types of questions previously – although this may have been the first time they were asked these questions in the branch.

Santander have provided me a copy of the screens their staff complete when they suspect a customer may be victim of a scam. I can confirm these do not refer to somebody's age and the questions they ask are not age related. So I'm satisfied Santander treated Mr S just like they would do any other customer in these circumstances.

I've also considered what Mr and Mrs S have said about the impact the restrictions had on them. While I can understand it would impact them, not being able to transfer money or withdraw large amounts of cash from the branch counter, I'm persuaded that Santander were entitled to take the action they did to protect Mr and Mrs S when they suspected that they may be falling victim to a scam based on the terms and conditions of the account.

The restriction did not fully block transactions entering and leaving their account, as I can see from the transactions that Santander have provided me that Mrs S was able to use a cash machine to withdraw money using her card during the five day period of the restriction on their account – Santander confirmed that the account was restricted between 8 July -13 July 2021.

I can also see that direct debits left their account also during this period. So while I've read what they have said about the impact this had on them, I can't hold Santander responsible for this when they didn't give Santander further information which they asked them. I'm satisfied if the required information would've been provided earlier then Santander would've lifted the restriction earlier, based on them doing so when Mrs S gave them the extra information.

I've listened to a call which Mr S was present, on 8 July, when he went into the branch to make a withdrawal and it was confirmed to him that he would be able to take money for living expenses, but as Mr S was wanting to withdraw £20,000, Santander were unable to agree to this amount. Mr S left the branch while the branch staff was on the phone to authorise a withdrawal. So although Mr S has said this placed him in financial difficulty during the time the account was restricted, he did have the option to take money for his living expenses, but he didn't take them up on this.

Finally, I've considered what Mr S has said about his time being wasted by returning to the branch on two separate occasions to collect his money, only for him to leave empty handed. I'm persuaded that Santander have inconvenienced Mr S here and I'll explain why.

Mr S was given the impression that on 6 July, he could return on 8 July to collect the cash he wanted to withdraw. But that didn't happen. Prior to this point, the restriction had not been placed on the account, according to the system notes I've been provided with. But when he went into the branch, he was subjected to a one hour wait while a member of staff attempted to speak to their security team. I don't doubt that Mr S waited for a long time as the staff member suggested Mr S returned home. While this will have inconvenienced Mr S, he would have always needed to visit the branch again to collect the money and may have had to pass security procedures to access the money.

But when Mr S was informed by Santander that he could return to the branch to collect the cash, he says he informed the call handler he was not prepared to answer further questions and the call handler said the process would be brief and efficient. I can understand why the call handler would be under the impression that everything was resolved based on the security notes I've been provided with (although I can't go into detail here about Santander's specific security processes), so I'm persuaded that the call handler had good intentions of what he told Mr S, but he set an expectation that Mr S would be able to withdraw the cash he wanted in an efficient manner.

But that's not what happened. Mr S had to wait for another hour and Santander wouldn't release the funds and they restricted his account. While Santander were entitled to restrict the account, they had also told Mr S that he could have the cash with minimal fuss, only to inconvenience Mr S to go back into the branch after his previous visit, then wait, then be told that he wouldn't be able to access the funds apart from living expenses.

So I'm persuaded that Santander should recognise the impact this inconvenience would have on Mr S and to pay him compensation to apologise for this. I'm satisfied that £100 would recognise the inconvenience of returning to the branch, only to need to wait and then leave without any money. While Mr S walked out of the branch while the branch staff was on the phone on his behalf still, this will be because of his frustration of being inconvenienced, so it follows I intend to ask Santander to put things right here."

I invited both parties to let me have any further submissions before I reached a final decision. Santander responded and they said they had nothing to add. Mr and Mrs S responded to my provisional decision. They made a number of points. In summary they said it is a sham to draw in the unsuspecting customer for the bank for them to do as they please without fear of consequence or repercussion, they commented on some of the lack of powers which our service has in terms of complaint handling and acts of breaching the law.

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.

I've considered what Mr and Mrs S have said regarding Santander doing as they please without any fear of consequences or repercussions. I'd like to emphasise that this service is not the regulator. Nor do we act as the enforcer for the regulator. The regulator is the Financial Conduct Authority. Our service acts as an informal dispute resolution service for complaints about financial businesses. We look at the circumstances of individual complaints and, on a case by case basis, taking into account relevant industry guidance for example, make findings about whether a financial business has failed their customer in any way.

Where we find they have, we make awards designed to make the business put things right with the complainant customer. Our awards are not designed to punish a business or to make it change the way it acts in order to protect other customers in the future. That is the role of the regulator.

I know Mr and Mrs S have said that I have “*supported*” Santander. But my role is to be impartial. I have upheld Mr and Mrs S’s complaint in part, and I explained in my provisional decision that Santander had provided poor customer service particularly to Mr S. So I hope this reassures Mr and Mrs S that I have looked at this complaint based on all of the evidence available to me.

I’ve considered what Mr and Mrs S has said about our powers and what we can and can’t look at, especially breaches of the law. But as I mentioned in my provisional decision, *“I must make it clear to Mr and Mrs S that discrimination is a matter of law, set out in the Equality Act. It’s for the courts to make findings on matters of law, and it wouldn’t be appropriate for me to make a finding that Santander acted in breach of the Act.”* Mr and Mrs S are free to take Santander to court if they wish to do so. Our service is intended to be a quick and informal body and it is an alternative to a court.

In summary, Mr and Mrs S’s response hasn’t changed my view and my final decision and reasoning remains the same as in my provisional decision. I know Mr and Mrs S will be disappointed, but I hope they understand my reasons.

Putting things right

In my provisional decision I said I intend to ask Santander to pay Mr and Mrs S £100 for inconvenience. I’m still satisfied this is a fair outcome for the reasons given previously.

My final decision

I uphold the complaint in part. Santander UK Plc should pay Mr and Mrs S £100 for inconvenience.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs S and Mr S to accept or reject my decision before 18 July 2022.

Gregory Sloanes
Ombudsman