

The complaint

Mr K complains that Santander UK plc recorded a CIFAS marker against his name. CIFAS is one of the UK's fraud alert services. His complaint is brought on his behalf by his mother, who I'll refer to as Mrs K.

What happened

On 1 February 2019, Mr K's account was credited with £1,000. Within two hours most of the money had been withdrawn. There were two point of sale transactions, two ATM cash withdrawals and cash was withdrawn at a post office counter.

Shortly afterwards, Santander received notice from the third party bank that the money had been taken fraudulently from its customer's account.

Around four hours later, Mr K phoned the bank to report that he had lost his card, most probably on 29 January. He reported the debit transactions as fraudulent.

Santander investigated, concluded that Mr K had knowingly received a fraudulent credit and benefitted from it. It closed Mr K's account and recorded a CIFAS marker against his name.

Mr K had difficulty trying to open an account elsewhere, so he complained to Santander but it wouldn't remove the CIFAS marker.

Our investigator didn't recommend that the complaint should be upheld. He thought the CIFAS marker had been filed correctly because Mr K was most likely aware that the disputed transactions were taking place. Mr K hadn't questioned the credit into his account, hadn't completed the necessary forms to dispute the transaction and hadn't replied to Santander's voicemails when he'd been contacted to discuss the situation.

Mr K didn't agree. Mrs K replied on his behalf and said, in summary, that:

- Mr K thought the transactions were due to a bank error. He was unaware of the seriousness of the situation and didn't see the urgency of going to a Santander branch, which was difficult for him because of his college timetable.
- Mr K didn't receive any correspondence from Santander, although it had been told his new address.
- Mr K was only aware that there was a problem when he tried to open a bank account with another bank.
- Mr K has been penalised by Santander for telling it about the transactions. He never requested a refund because he knew he didn't have the money in his account.
- The CIFAS marker will have a big impact on Mr K for a long time. This is an isolated incident and the bank has not suffered a loss as a result. Mr K does not understand what he has done wrong.
- Santander never asked him about the £1,000 credit. If it had asked, he would have said he knew nothing about it.

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.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The money credited to Mr K's account was a fraudulent transaction – the money had been debited from a third party's account without their authority or consent. And the credit was withdrawn in a series of transactions shortly after the credit was applied to the account in a pattern typical of that of a fraudster. But before placing the CIFAS marker against Mr K's name, Santander needed to have a reasonable belief that criminal charges could be brought against Mr K as a result of the activity. A suspicion or concern isn't enough. So I need to decide if there's enough evidence to show that Mr K knew more about this than he and his mother have told us.

Mr K says he lost his card and that he knows nothing about the credit to his account. He says he didn't carry out the transactions on the account on 1 February which withdrew most of the fraudulent credit and that he didn't authorise anyone else to carry out the transactions. But, after careful consideration, I think Mr K knew more about this than he's told us. I say that for the following reasons:

The loss of his card

Mr K says he lost his bank card. He didn't report it missing until around three days after he says he lost it – and after the disputed transactions had taken place. He says he hadn't realised he'd lost it until 1 February and that he's always losing things, and I accept this is possible. But he told us the card was in his wallet and that it was the wallet that he'd lost, along with this phone and his house keys. If he'd only lost his card, I could understand Mr K might not have noticed this until he needed it to make a transaction. But it seems reasonable to me that he would have realised in a very short space of time that he'd lost his wallet – containing his card, cash and college identification card – particularly as he says it went missing at the same time as his house keys and his mobile phone.

Knowledge of Mr K's PIN

The disputed transactions were carried out using Mr K's genuine card. If his card had been lost, this doesn't explain how whoever found it was able to carry out the transactions using Mr K's PIN.

What Mr K has said about this is confusing and inconsistent. He told the bank he couldn't think of how anyone would have known his PIN. But later he said he may have written it down. He said he couldn't always remember the PIN, so he'd written it – undisguised - on a piece of paper when he first had the card. He said that piece of paper might have been in his pocket, or in his wallet. Whilst it's possible Mr K may have kept that piece of paper in his wallet since October 2017 when the PIN was issued, I find it unlikely, particularly as he regularly used the card with the PIN number so he was unlikely to need it written down. And I find it even more unlikely that the piece of paper with his PIN number on it was in his pocket more than a year later.

So I think it's more likely that the individual who carried out these transactions knew the PIN – either because it was Mr K who carried out the transactions or because Mr K gave his card and PIN to a third party to carry out the transactions.

Collection of new bank card and follow up of the situation with Santander

When Mr K reported the loss of his card, he asked Santander to send a new card to his local branch. But he didn't visit the branch to collect his new card. Mrs K says this is because he found it difficult to get to the branch because of his student timetable and that he didn't realise there was any urgency. But it seems odd that, if Mr K knew nothing about the fraud, that he didn't want to continue to use his bank account as he had regularly done in the past.

He was also asked to go to the branch to complete the bank's fraud report forms, which he didn't do. I find this surprising, bearing in mind what he says about being worried he would have to pay interest and charges if the disputed transactions led to an overdraft on his account.

I can see that Santander tried to phone Mr K on several occasions to discuss the outcome of its investigation, but the phone was only answered once. On that occasion, Mr K gave the correct answers to the bank's security questions, but then the call cut out. And when Santander tried to re-dial, there was no answer. Santander left at least two voicemail messages for Mr K and I would have expected him to get in touch with the bank to find out what was going on and to find out why the bank needed to speak to him.

It does appear that Santander didn't update its records when Mrs K told it the family had moved house. So its letter dated 14 February 2019 telling Mr K that it was closing his account was unlikely to have been received by him. But Mr K says he received a text – he certainly seemed to know that his account had been closed. So I don't think the failure to update Mr K's address makes a difference to the overall conclusion here.

The transactions on 1 February 2019

The £1,000 credit was received in Mr K's account at 2.55pm. The first transaction to spend the money was at 3.16pm and then the remaining withdrawals took place over a period of just over 20 minutes. These all took place around eight miles from Mr K's home address. There is then no activity for nearly an hour. The next use of the card is a balance enquiry at an ATM close to Mr K's home – just over a mile away. There is then an attempted point of sale transaction to the value of most of the remaining balance.

Mr K says he lost his card on 29 January. Meaning someone must have found his card, waited until 1 February to use it, and was fortunate enough that this was just after the £1,000 credit. Having withdrawn most of the £1,000, they chose to leave just over £30 in the account and move to within a mile of Mr K's home before they tried to spend it. I'm sorry but I don't find this plausible. It seems more likely to me that Mr K carried out the transactions himself; or he authorised a third party to do so. And most likely that third party returned the card to Mr K after the transactions and that he then checked the balance of the account before trying to spend the remainder.

The pattern of transactions is typical of an account holder allowing their account to be used by third party for them to launder money through it – a term more commonly known as a money mule. If there was some evidence that Mr K had been coerced or threatened into allowing a third party to use his account in this way, I would expect the bank to show some sympathy for him and, depending on the circumstances, it may not be appropriate to record a fraud marker. But Mr K maintains he knows nothing about the transactions and I've not seen anything to suggest he was forced into allowing someone to carry out these

transactions – I would have expected him to tell his parents and to report it to the police if this was the case.

Taking all of this together, this all points to Mr K knowing more about the transactions than he's told us. And I think Santander does have enough evidence to report this matter to the police.

In reaching this decision I have taken into account that Mr K was very young when these transactions happened and that he was unlikely to realise the serious implications. I've considered that his immaturity and naivety will have had an impact on his actions. I've also considered the impact the CIFAS marker has had on him – and will continue to have on him – just as he is 'starting out' in life. But I'm afraid this doesn't change my overall conclusion. I've found that the CIFAS marker is factually correct, so I can't ask Santander to remove it.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 June 2020.

Elizabeth Dawes
Ombudsman