

The complaint

Mr I complains that Santander UK Plc unfairly recorded a marker at CIFAS the national fraud database.

What happened

Mr I had an account with Santander. He says that he was intimidated into providing his bank details to associates of a friend of his on 29 August 2018. Mr I moved his existing legitimate balance to his account elsewhere. He continued to access his account using online banking through the period. On 4 September 2018 an international CHAPS payment for £1,765.34 was credited to his account. This was taken out through both cash withdrawals and also a faster payment of £1,000 made using online banking on 5 September 2018. That payment was made following a log on with a device that had been registered to his online account on 27 August 2018. And that payment was validated with a one-time passcode (OTP) sent to the phone number Mr I had been using for online banking for a number of months.

On 5 September 2018 Mr I went to the police and made a statement saying he had been threatened and he named his friend as being involved. He says he had provided account details including his PIN and card to males he didn't know. And that he knew that his bank account was by then blocked. He has shown that he had support from a victim charity starting on 12 September 2018.

Further international payments totalling over £3,000 were credited to his account and withdrawn after his police statement. On 20 September 2018 Mr I went to Santander and closed his account. On 21 September 2018 Santander received a report that the first international payment was fraudulent and registered a fraud marker. Mr I tried to open an account again at Santander in February 2019, but this was declined. He found out about the CIFAS marker and complained saying he had no involvement with fraudulent money in his account.

Santander said it had registered the marker correctly as the credit had been reported as fraudulent.

Our investigator didn't recommend that the complaint be upheld. He said that:

- He could understand why Mr I would on his account have moved all his own money after he says his card and details were taken but it was strange that he hadn't reported this to Santander at the time.
- Mr I had been logging on regularly to his account during the period and had seen the international credit and withdrawals. But Santander says it spoke to Mr I on 5 September 2018 when he confirmed the withdrawals were genuine.
- Santander's notes indicate it marked his bank card as lost on 6 September 2018 but again there is no record of him pursuing concerns about fraudulent payments on his account.
- Multiple payments were made from his account and the OTPs needed were sent to the phone number he'd previously registered with Santander. And access was made using a new device that had been registered before Mr I says he was first threatened.

- Mr I's security information was changed on 5 September 2018, but he was still able to log in using the original device he'd registered, and access was made with the other device too.
- His pattern of log ins suggests he was waiting for something to happen on the account.
- It was more likely that Mr I was a willing accomplice in the fraudulent activity and so it wasn't unreasonable for the fraud marker to be added. He continued to either facilitate or allow the payments out of his account after reporting the card theft to the police.
- Although Mr I said he had a conversation about this with branch staff at the time there was no indication of him being referred to the fraud team until after he learnt about the CIFAS marker.
- Santander had investigated what happened but after the account was closed and so hadn't spoken to him before the CIFAS marker was added.

Mr I didn't agree. He emphasised the impact the marker is having on his ability to get an account elsewhere and will do on his future plans for study and employment. He said he was 'not aware at all' of the nature of what was going on in September 2018. He was in contact with police and was 'faced with duress'. He can't recall telling Santander the payments were genuine. He said that had he known that this was fraud he would have gladly co-operated with Santander. It is unreasonable to say he was largely involved as the police were made aware of what was happening.

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 need to consider whether the report to CIFAS was made fairly. On this point, Santander needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

On his complaint form to this service Mr I explains that he reported the crime to police. And that *'they acknowledged the situation and were prepared to take action'*. He said that the police case hasn't been closed but left on hold as the friend *'mentioned on the police report had his family speak to my parents and come to a compromise'*. In his statement to the police he said that Santander had made him aware of fraudulent transactions on his account and had *'barred my card and my access to online banking. I will be making more contact with the bank to establish what happened and to make a full report of this.'* He said he had received personal threats since his account was blocked.

I think that this information is at odds with what Mr I now says to this service - that he wasn't really aware of what was going on. The evidence is that at the least he was taking a particularly close interest in the entries on his account including at around the time the fraudulent credit came in. On his version of events he had no reason other than to think that this was fraudulent activity given the way he says his details were obtained. And he's not explained how someone else was able to register a new device to his account before he says his details were taken and then carry out the online transfer of £1,000 with that device and using a OTP sent to his phone.

It seems clear that Mr I must as Santander says have spoken to it about these entries and arranged for his account to be unblocked because further significant payments were then made. So, I agree with our investigator that he did nothing to prevent this fraud happening

using his account. At best he protected his own funds and then observed things. And he didn't do anything including closing his account until all the money had been withdrawn.

I know Mr I thinks that his report to the police gives him cover for his actions. But I don't think it's quite as simple as that. For his own reasons he decided not to pursue police action he says having resolved things with someone he knows was involved with the people carrying out the fraud. He knew he ought to tell Santander what was happening but instead all he did was help to facilitate things by doing nothing.

I make my findings on what I think is *most likely*. While I don't doubt Mr I had concerns about what was happening and possibly when he realised the full extent of this I think he had every opportunity to report what happened. Having felt able and been prepared to go to the police he knew he ought to tell Santander. There's no evidence he did more than report his card lost at the time. But he was closely tracking things all along. I can't resolve *exactly* what his level of involvement here was. I find though it most likely that he was a witting participant and at the least knew his account was being used for fraudulent purposes. Balancing all the factors I think he's fairly responsible for not doing anything about this.

Santander says that it applied the CIFAS marker because Mr I received fraudulent funds into his account. So, I've looked at whether Santander was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Santander needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr I's account of events and the evidence Santander has provided, I'm satisfied that Santander had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr I received fraudulent funds into his account and didn't report this to Santander at the time.
- He allowed the withdrawal of the funds and so was effectively in control of who had the benefit of this money.
- Santander had grounds to believe that Mr I was involved in the dispersal of fraudulently obtained funds based on the evidence it had.

I fully understand that Mr I now regrets what happened and he's set out the impact for him of the marker. But I'm afraid I don't have a reasonable basis to find that Santander should take any further action.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 30 December 2020.

Michael Crewe
Ombudsman