

## The complaint

Mr H complains that Santander UK Plc has unfairly registered fraud markers on national databases.

## What happened

Mr H says he found out about the markers when he tried to get a mortgage from a different business. He says that he hadn't used his account at Santander since 2012 and that someone must have taken it over and received fraudulent payments. Mr H says he had never changed his mailing address when he moved away.

Santander says that three fraudulently obtained payments of £2,000 were credited to Mr H's account on 10 December 2018. Attempts were made to transfer this money to other accounts using faster payments. All of the money was recovered. It said Mr H had called it on 7 December 2018 to change the phone number linked to his online account to the main mobile number it had on record for him since 2012. And multiple log ins had been made prior to the fraudulent funds being received. The payments out were verified when one-time passcodes (OTPs) sent to the phone number for Mr H were entered. It had tried to contact him and had written to him at the address it had on record when his account was closed.

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

- She'd reviewed the entries on the account in the period before December 2018. It had been used normally up to May 2017 and so hadn't been dormant since 2012. For example, there had been a credit of £50 in April 2017 with reference "Mum". There was no explanation why an unknown third party with access to the account would use it in this way.
- Although Mr H said his phone could have been hacked there was no evidence to support this. He confirmed he had the phone at the time of the payments and didn't share it with anyone. He said he hadn't been approached by anyone asking to use his account.
- She thought it reasonable that he would have updated his address details. While Mr H said his other information had been hacked on the 'dark web' there was no evidence of any other attempted fraud using those details.
- She didn't think it likely anyone other than Mr H had used the account and said that he authorised the attempted payments.
- It was reasonable for markers at CIFAS and SIRA to be recorded.

Mr H did not agree. He indicated he had more comments to make. But he didn't do so when asked to by the investigator before the case was passed to me for a decision. And I consider he's now had a reasonable opportunity.

## 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 fraud reports including to CIFAS were 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.

I have looked closely at the information Mr H has submitted. He's shown that he had tenancy agreements away from what I understand was the family home while he was studying and also when working. He says he no longer had access to his address after 2012 so wouldn't have received correspondence from Santander and that his account was dormant. He's also shown that recent credit reference agency reports indicated that some of his information may have been compromised. Mr H also refers to the possibility of the OTPs being intercepted.

I need to think about what is *most likely* here and the most relevant points to me are:

- As our investigator has said Mr H's account seemed to be being used relatively normally up to May 2017. If a fraudster did have access to it and say had received an updated card and PIN (to make a cash withdrawal in April 2017) it's unclear why that person would have operated the account in this way. And why that person waited so long to carry out this fraud risking detection.
- Mr H says he didn't call Santander on 7 December 2018 to change the mobile number to receive the OTPs. I've listened to a recording of the call and of course I appreciate Mr H's security information could have been discovered. But it doesn't make any sense for a fraudster to change the number to that of Mr H and not to another number if it wasn't him making the change.
- Linked to this there is no explanation of how someone was able to access Mr H's online account using his details and then attempted payments verified with the OTPs that were sent to his phone. It is clear that the person involved was expecting something to happen on the account as it was checked a significant number of times starting from the day before the credits were received.

So, I don't find Mr H's explanation that his account was taken over by an unknown third party to be the most likely. I consider he either made these attempted payments or allowed someone else to have the necessary access to his account to do so. And that would include allowing access to his mobile phone for that period. Mr H continued to use his mobile number without any reported problems after that.

Santander says that it applied the marker because Mr H 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 H's account of events and the evidence Santander has provided, I'm satisfied that Santander had sufficient evidence for the fraud markers to be recorded. In coming to this view, I've taken into account the following reasons:

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

I appreciate what Mr H says about the impact of this on him now. But I'm afraid I don't have a basis to require Santander to 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 H to accept or reject my decision before 9 December 2020.

Michael Crewe  
**Ombudsman**