

The complaint

Mr L complains on behalf of M, a limited company, that Santander UK Plc blocked and then closed M's account, and wrongly registered a Cifas marker against him personally.

What happened

M had a business account with Santander. In 2019, some of M's customers reported to their own banks that M was trading fraudulently, and those banks reported their customers' concerns to Santander. The bank blocked and then closed M's account, and recorded a Cifas marker against its director, Mr L. He complained, and the bank removed the Cifas marker, and offered him £250 for his trouble. But Santander still declined to re-open M's account.

In early 2020, Mr L complained to our Service, on his own behalf and also on behalf of M and his other company. That complaint was therefore treated as three complaints, and this decision is only about M's complaint. The other complaints are being dealt with separately.

One of our investigators decided on technical grounds that M's complaint was not within the jurisdiction of the Financial Ombudsman Service, because it had not been brought by an eligible complainant. Mr L asked for an ombudsman to review this complaint. I decided that we did have jurisdiction to consider this complaint after all.

Rather than ask the investigator to look into this complaint again, I decided to proceed straight to issuing a final decision about the merits of this complaint myself. That was because the issues in this complaint are essentially the same as the issues in Mr L's own complaint, which our investigator has already decided on its merits. So I expect that her opinion about this case would have been the same as her opinion in that other case, and so Mr L has already had an opportunity to comment on her decision.

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.

Having done so, I do not uphold it. I will explain why.

The Cifas marker

As I've said, Santander received a number of complaints from M's customers, each alleging that they had been scammed. Santander investigated this, and on the first two complaints it gave Mr L the benefit of the doubt. But on receipt of the third such complaint shortly afterwards (each complaint being made by a different customer), Santander recorded the Cifas marker against Mr L, as he was M's sole director (and Cifas markers are recorded against individuals, not against companies). That was because at the time, Santander thought that Mr L, in his capacity as M's director, had been committing fraud. (More such allegations followed.)

Given the allegations that had been made, and the fact that they were made within a relatively short time, I think it is neither surprising nor unreasonable that Santander responded the way it did. Banks have a duty to combat fraud, not just to protect their own customers from being defrauded but also to prevent their own customers from using their accounts to receive the proceeds of crime. Reporting people to Cifas is one of the ways in which banks co-operate with each other to achieve this.

12 days later, Santander removed the Cifas marker after Mr L appealed, and Santander accepted that the complaints were only civil disputes between those involved, and that Mr L had not defrauded anyone. That was a relatively short time, and although it inconvenienced the company in the meantime, I think it was a reasonable timescale.

Just because Santander changed its mind and removed the marker after it received further evidence from Mr L, does not mean that it was wrong to record the marker in the first place. It made its decision in good faith on the basis of the information it had at the time, and then revised its decision when further information came to light. I can readily appreciate that Mr L may feel hard done by, to have been accused – however briefly – of frauds he had not in fact committed. But I would only criticise the bank for doing this if its decision was either made in bad faith or if it was so obviously irrational that it could not possibly have been justified.

I recognise that this is a high bar for a complainant to have to reach, but that is only because I think the Financial Ombudsman Service should be slow to interfere with such decisions, especially given that we (and the regulator) expect banks to be robust and prompt in dealing with fraud or allegations of fraud. It would risk sending mixed messages to financial institutions. Occasionally mistakes will be made, but as long as they are honest and reasonable mistakes then I think that is better than erring too much on the side of caution and thereby allowing fraud to go unprevented. (People would complain about that instead.) So it would be wrong of me to uphold complaints against banks too readily in cases where they have taken the steps they thought were necessary to prevent fraud.

The blocking and closure of the account

For the same reasons, I think Santander acted reasonably in blocking M's account, and in notifying M that the account would be closed.

The decision to keep the account closed was made at the same time as the decision to remove the Cifas marker. By then, of course, Santander had accepted that Mr L was not a fraudster. So I can understand his disappointment at being told that M's account would remain closed. But Santander's decision was made in spite of that fact.

Santander decided to continue with the account closure simply because it expected to receive more complaints from M's customers, and so as a result it was not prepared to accept the risk M posed to the bank's own business, even if the problem was not fraud but only civil disputes. That was a commercial decision which Santander was entitled to make. That would normally require two months' notice, but under paragraph 17.3(e) of the account terms and conditions, the bank was entitled to give less notice than that (in this case that was 30 days). That clause applies where there is "reasonable suspicion of fraud," whether there actually was fraud or not.

My final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L on behalf of M to accept or reject my decision before 27 November 2020.

Richard Wood
Ombudsman