

The complaint

Miss K complains that Santander UK Plc closed her account and recorded a Credit Industry Fraud Awareness System (CIFAS) marker against her name. She feels the marker should be removed.

What happened

I sent Miss K and Santander a provisional decision on 13 January 2021 to explain why I wasn't intending to uphold the complaint. An extract from my provisional decision is set out below:

“The marker Halifax has filed with CIFAS is intended to record that there’s been a ‘misuse of facility’ – relating to using the account to receive fraudulent funds. In order to record a marker like this, Halifax isn’t required to prove beyond reasonable doubt that Miss K is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. CIFAS says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

What this means in practice is that a bank must first be able to show that either there was an attempt to put fraudulent funds into Miss K’s account or fraudulent funds have entered Miss K’s account, and were either moved on or retained. And secondly, the bank will need to have strong evidence to show that Miss K was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment.

This can include allowing someone else to use her account in order to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

Santander has sent us details of the information it received from the other bank about the fraud and where the funds for the payment of £520 had come from. And from this, I’m satisfied the payment into Miss K’s current account was fraudulent funds.

When Santander initially asked Miss K about the payment, she said it must have been her wages. But she also said she doesn’t usually get paid wages in that way and she couldn’t provide a wage slip or any other evidence that she was entitled to the funds.

And Miss K later told our service she was expecting to be sent some money into her account as a gift as it was the festive season. But she hasn’t given any further information about who the gift was supposed to be from or any evidence of that person sending her the money. And she’s told us she doesn’t know the person named in the reference of the payment.

While the payment credited her account more than two years ago now, and around eight months before Santander initially asked her about it, I'm concerned by Miss K's contradictory accounts of what the payment was for. There are significant differences in what she's said, from the payment being wages to a seasonal gift. She's not explained why she's given different accounts. And she hasn't been able to provide any evidence to support either account when I think some evidence for them wouldn't be particularly hard to get, even now.

The statements for Miss K's account also show the funds from the payment were moved into her savings account on the same day they were received, and then sent out of her savings account over the next few days. And these transactions wouldn't have been possible without the funds from the payment, as the balance of Miss K's accounts would've been too low, which suggests Miss K was aware of the payment coming into her account.

So, based on the evidence I've seen, I think it's likely Miss K was complicit in receiving the fraudulent funds. And so I think Santander has met the requirements to record the CIFAS marker and I won't be asking it to do remove it.

I've also looked at whether Santander acted reasonably in closing Miss K's account. Following its investigation, Santander wrote to Miss K saying it was withdrawing her banking facilities with immediate effect. And I've looked at the terms and conditions of Miss K's account and I'm satisfied they allow Santander to do this in these circumstances. So I think Santander did act reasonably in closing Miss K's account."

I said I'd consider anything further Miss K and Santander sent in.

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.

Neither Miss K nor Santander sent in any further information. So I still think the conclusions I set out in my provisional decision are correct, for the same reasons. And I still don't think this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 17 March 2021.

Alan Millward
Ombudsman