

Complaint

Mr A complains that Santander UK Plc registered markers against his name with a fraud prevention agency without justification.

Background

Mr A had an account with Santander which he used to operate his business. He's told us his business provided software solutions to clients. The scope of these services looks to have been quite broad. As an example, he's said some clients were offered software that aimed to improve the performance of their computer. He's also provided evidence showing an agreement with a client to carry out website maintenance.

In June 2018, Santander received a notification that funds paid into Mr A's account were fraudulent. Santander carried out an investigation and was concerned by what it found. It identified a string of payments it had concerns about and asked Mr A to explain his entitlement to the funds. It also contacted those banks overseas that had sent these payments to him, although many have not responded.

Mr A told Santander that these payments were received in connection with services provided by his company. He submitted evidence of an email exchange relating to the website maintenance mentioned above. This email exchange related to one of the payments that concerned Santander, but not all of them.

Overall, Santander wasn't satisfied with the explanation given by Mr A as to the origin of these funds. It recorded markers against his name with fraud prevention agency Cifas. It told Mr A that *"the loading was due to multiple credits received into the account being confirmed as fraudulent by the sending bank. If the sending bank withdraws their current claims the decision regarding CIFAS can be reviewed again in the future."*

Mr A was unhappy with what Santander had done and so he referred a complaint to this service. It was looked at by an investigator who upheld it. The investigator thought that Santander hadn't done enough to justify the loading.

Santander disagreed with the outcome reached by the investigator. It pointed out that there were still several payments which Mr A hadn't been able to explain. It also pointed out several other concerns it had about the way Mr A operated his business. It noted that one of the invoices issued in connection with one of the services rendered by Mr A's business appeared to have a different company name printed on it. Mr A was the sole director of a limited company duly registered with Companies House. But in that instance the payment appeared to have been made to a company with a similar name registered in India. Mr A has told us that the business operating out of India is a subcontractor to his business – and he sent us a copy of the formal outsourcing agreement reached between those two businesses.

Santander was concerned that some of the funds that were paid into Mr A's account were quickly sent to an international money transfer company. Mr A says this was because he needed to pay his counterparty in India. He said this was the most cost-effective way of transferring the money.

As Santander didn't agree with the investigator's opinion, the complaint has been passed to me to consider and reach a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The question I must consider here is whether Santander acted fairly and reasonably in loading markers with fraud prevention agencies. The National Fraud Database Principles set a high standard that a firm must meet if it wants to load adverse information against a customer's name. It says that in order to do so:

"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."

The onus is on Santander to demonstrate that this standard has been met. I've considered the evidence provided by both sides and I'm not satisfied that it's done so.

In response to the investigator's view, Santander has said that the reporting of fraud by the sending bank is enough to show an identified criminal offence has taken place. I'm afraid I disagree. For two of the transactions, Mr A has provided evidence to show that it's likely this allegation of fraud was driven by a dispute between Mr A and his customer.

For example, he's provided a copy of an email sent to his company in which a client says they are *"really frustrated with the lag your software has created in my computer."* And the reporting of fraud by that client's bank came shortly after that email was sent.

I accept he's not been able to provide similar evidence for each transaction that Santander has concerns about. It's clear that the way Mr A has organised his business has caused him some difficulties here. Using an outsourcing firm on a different continent has clearly led to inadequacies in terms of record keeping. But Mr A has been able to provide evidence suggesting that at least some of the transactions that have caused Santander concern relate to legitimate contracts he entered into with clients.

I can't reach a firm conclusion on the other transactions that Santander has highlighted. But the question I need to consider is whether Santander has met the standard I described above. Overall, I find that there is far too much doubt about whether these payments were fraudulent to justify Santander's actions in loading the fraud marker.

Final Decision

For the reasons I've set out above, I uphold this complaint.

Santander UK Plc should remove the fraud markers it registered with Cifas without delay. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 April 2021.

James Kimmitt
Ombudsman