

The complaint

Mr A has complained that Santander UK Plc registered a marker against him at CIFAS, the national fraud database.

What happened

In late 2019, Mr A was contacted online by an individual claiming to work in an industry that Mr A was interested in. He posted Mr A a cheque for £500,000, supposedly as payment for upcoming work.

At the time, Mr A was a minor in his teens. And his parent explained he had conditions that meant his mental age was lower than it would normally be.

Mr A deposited the cheque at an ATM. The next day, he spoke to his parent about the cheque, realised this all seemed very odd, and called Santander. He reported the cheque as suspicious and it was cancelled. However, he said he didn't know who'd sent it to him.

The sending bank said the cheque had been sent from an account that had closed some years ago, and so the cheque was fraudulent.

Mr A's parent and the sending bank both spoke separately to the sender's guardian to find out what happened. The guardian explained that the sender had mental health issues and believed themselves to be in a high-up industry position. The guardian apologised for taking up Mr A's parent's time and thanked them for handling things thoughtfully. The sending bank told Santander they didn't have any fraud concerns.

Santander spoke to Mr A on a number of occasions. Mr A maintained he didn't know who'd sent him the cheque, despite his conversation with the sender. He got mixed up about various facts such as who he spoke to when, the amount on the cheque, and when he'd been on holiday in the weeks before this all happened. He said Santander had told him it was OK to deposit the cheque, but there was no record of this.

Because Mr A had initially deposited a fraudulent cheque and then had contradictions in his recounting of events, Santander closed his account and registered a marker at CIFAS saying that he'd misused his facility. They told him to go to CIFAS if he wanted it removed, then CIFAS explained he actually had to speak to Santander as they'd added the marker.

Mr A complained about the marker, but Santander refused to remove it. Our investigator also felt the marker was fair since Mr A had been so inconsistent about what happened. The complaint was passed to me to decide.

I sent Mr A and Santander a provisional decision on 25 March 2021, to explain why I thought the complaint should be upheld. In that decision, I said:

I have to consider whether this report to CIFAS was made fairly. On this point, Santander needed to have more than just a suspicion or concern. They needed to be able to show that they had reasonable grounds to believe that a fraud or financial crime had been committed or attempted, along with substantial evidence that would support this being reported to the authorities.

It's not in dispute that Mr A received a fraudulent cheque. But I understand the cheque was fraudulent primarily in that it came from a closed account, and I'm not sure how exactly Mr A would have known it was from a closed account. I've not seen evidence which shows that Mr A knew it was from a closed account. The issue, there, would seem to lie with the person who sent the cheque, rather than the person who received it. Indeed, I understand that Mr A's parent was mainly concerned that Mr A was being defrauded, not the other way around.

I also acknowledge that Mr A gave Santander explanations that were at points contradictory. But it's unclear whether that's because Mr A actually knowingly tried to commit a crime, or whether it's more down to factors such as his young age, his conditions, the time that had passed, feeling under pressure when repeatedly quizzed by adults from the bank, and potentially intense emotions such as worry or embarrassment. And even if I accept he was deliberately not telling the truth, dishonesty alone was not sufficient reason to add this marker. There had to be strong evidence he actually tried to commit a crime.

In this case, I'm not satisfied that Mr A was trying to commit a crime. It's worth reiterating that Mr A was the one who reported the cheque and got it cancelled, and he doesn't appear to have ever tried to spend the money. It's difficult to see how exactly he was going to profit from that.

Meanwhile, the sender seems to have been the one who actually wrote a cheque from a closed account under false pretences – and even then, it seems they did that because of their mental health issues. Their guardian appeared to be happy to drop things and was thankful to Mr A's parent for getting to the bottom of it. The sending bank confirmed the parent and guardian's story about what the sender had thought they were doing, and they had no fraud concerns.

I accept that Mr A acted very unwisely indeed by initially depositing a cheque that was so large and from someone he didn't really know. I also accept it is possible that Mr A was trying to commit some kind of fraud in some fashion. But given that:

- *He didn't actually write or send the fraudulent cheque in question*
- *He was the one who reported the cheque and got it cancelled*
- *He didn't spend the money*
- *He was a minor with a potential vulnerability*
- *He doesn't appear to have understood how cheques work, which is understandable at his age*
- *The sender's guardian was happy to resolve things amicably, and*
- *The sending bank had no fraud concerns*

I don't think I can fairly conclude that it is most likely Mr A was trying to commit fraud. And while I do understand Santander's point of view, I don't think they have sufficient evidence to show that Mr A knowingly tried to commit a crime, either – not least bearing in mind the standard of evidence needed to support this marker. Ultimately, it seems likely that the whole thing was a misunderstanding between two young people who weren't fully aware of what they were doing.

It follows, then, that I'm not currently persuaded that Santander had sufficient grounds to apply this CIFAS marker, and I cannot safely conclude that the marker is fair or reasonable in the circumstances.

I also understand Mr A was unhappy that Santander closed his account. But putting the potential fraud issue aside, Santander were allowed to close the account if they no longer wanted to have Mr A as their customer – similar to how Mr A was allowed to close the account if he no longer wanted to have Santander as his bank. I will note that Santander normally had to give two months' notice, rather than the one months' notice they gave here, though it's unclear if the extra notice would have made a significant difference to what happened in this case.

Lastly, I can see that Santander wrongly directed Mr A to CIFAS to complain about the marker, which sent him down the wrong path and delayed things. I also understand Mr A suffered a good deal of distress here, and had trouble getting accepted by banks because of the marker. So I also think Santander should pay Mr A some compensation for the impact their actions had.

I said I'd consider anything else anyone wanted to give me. In light of the new information in the decision, Santander removed the CIFAS marker and agreed to pay the proposed compensation. Mr A's parent added a further point, which I'll talk about below.

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.

Mr A's parent reiterated that because of the CIFAS marker, Mr A was turned down for a job which he'd otherwise passed the interview for. They provided a letter to back this up, and explained this had impacted Mr A starting his career and had made him feel particularly low.

I completely understand why the parent reiterated this point and I can certainly appreciate the impact this would have had on Mr A. I've thought carefully about this issue and took it into account in deciding what compensation to award.

As I explained in my provisional decision, I wasn't convinced that Mr A was trying to do anything significantly wrong here, and I felt that Santander probably didn't have enough grounds to add this fraud marker. So it follows that I wanted Santander to remove the marker and pay some compensation for their part in things going wrong.

But it's worth bearing in mind that Mr A acted very unwisely indeed by depositing a fraudulent cheque – which he should have reasonably known was suspicious – and then by not being truthful with Santander, which put them on alert. Those kinds of actions were always going to have consequences. And so I think Mr A also bears some responsibility for what happened, not just Santander. As I said before, I can understand Santander's point of view and why they initially thought to add the marker, even if I think they ultimately shouldn't have added it. I've also kept in mind that we're here to resolve complaints informally, and not to punish businesses or issue large fines.

With all of that in mind, I think £200 is a fair amount of compensation for Santander to pay, to acknowledge their part in things going wrong and the impact it had.

Mr A may also wish to speak to the company who turned him down and let them know that the CIFAS marker is being removed.

Putting things right

I direct Santander UK Plc to remove the CIFAS marker in dispute – which I understand they have now done, though this may take some time to show on Mr A's file. I also direct them to pay Mr A £200 compensation.

My final decision

I uphold Mr A's complaint, and direct Santander UK Plc to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 May 2021.

Adam Charles
Ombudsman