

The complaint

Mr and Mrs S complain that Santander UK Plc restricted their accounts when they discovered a fraud prevention marker by a third-party bank. They would like to be compensated for the impact this had on them.

What happened

Mr and Mrs S held a joint account with Santander, and Mr S held an account in his sole name.

Mr S applied for a credit card with Santander. During the application Santander found that another bank (Bank B) had recorded a marker against Mr S with the CIFAS fraud prevention database. This marker said that a company Mr S had been director of had received fraudulent funds.

Santander declined the credit card application and took the decision to close Mr S' accounts, including the joint account with Mrs S. They issued a letter saying the accounts would be closed in 30 days. They also restricted activity on the account, so payments couldn't be made to or from the account. They said the money could be withdrawn if Mr S went in to branch with ID or transferred out to another account in his name.

Mr S had no idea about the CIFAS marker, and tried to resolve the matter with Bank B. Unhappy that Santander were closing his accounts, Mr S raised a complaint. Santander looked in to what happened but didn't think they'd done anything wrong. They explained they reserve the right to withdraw banking facilities at any time. They said the accounts would still be closed, but if Mr and Mrs S could provide evidence the marker was placed in error, they would review their decision.

Shortly after this letter was sent, Bank B made the decision to remove the marker and contacted CIFAS about this. Mr S informed Santander, and they reversed their decision to close the account.

Mr and Mrs S were still unhappy with Santander's response. They said closing the accounts had left them destitute and unable to make scheduled payments. They were unhappy Santander hadn't taken account of their years of banking history and credit files. Mr S explained the account closure had taken a toll on his mental health.

One of our investigators looked in to what happened. They initially felt that Santander hadn't done anything wrong by closing the account, as the bank were entitled to rely on CIFAS markers left by other businesses.

They later reconsidered and said that they didn't believe the terms of the account for immediate closure applied here. They said it wasn't fair for Santander to rely solely on the CIFAS marker to restrict the account. They said the terms of the Santander account didn't allow for closure based on fraud happening outside of Santander. Having considered the impact on Mr and Mrs S, they said Santander should pay them £250 for the trouble and upset caused by restricting their accounts.

Both Santander and Mr S disagreed. Santander felt that the CIFAS marker from Bank B reasonably suggested to them that Mr S had been involved in fraud. They said as soon as they became aware of Bank B removing the marker, they took steps to remedy the situation. They also felt the term they relied on to close the account was broad enough to include suspicion of fraud on accounts outside of Santander.

Mr S disagreed with the amount of compensation suggested by the investigator. Because no agreement could be reached the case has been passed to me for decision.

Since then Mr S has clarified to me that he had no other bank accounts to transfer the funds in to, but Mrs S did. He also said he felt an amount of £500 to £1,000 compensation would be appropriate.

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.

The key question for me to answer is whether Santander were fair and reasonable in restricting the use of Mr and Mrs S' accounts once they found the CIFAS marker. Having considered what happened, I'm not satisfied they were. I'll explain why.

Santander's terms allow them to close an account for whatever reason, provided they give two months' notice. But in this case, they only gave Mr and Mrs S 30 days' notice. And the account was restricted immediately, and Santander would only allow specific withdrawals, so in practice I consider it was closed with no notice.

Section 17.3 of the terms of the account say that Santander can give less than the two months' notice if either if Mr or Mrs S "*act in any way to give rise to reasonable suspicion of fraud or other criminal activities.*" Section 6.6 says Santander can refuse payment instructions for the same reasons – so restrict the use of the account.

Restricting the actions an account can take can have a large effect on a consumer and can be incredibly disruptive to their lives. Particularly if they are left without access to other banking facilities and will miss regularly scheduled payments. So, it's not a step Santander should take lightly.

To record a marker with CIFAS the bank or financial business must have enough evidence to prove that the individual reported has carried out fraud, and they must have carried out sufficient checks to demonstrate this. Santander argue that because of this, they are entitled to rely on the information Bank B recorded with CIFAS, and therefore had reasonable suspicion of fraud taking place. So, they say they didn't do anything wrong by restricting the accounts immediately.

I agree that in general Santander can accept the information from Bank B at face value, and so I can see why they would then have concerns about Mr S. However, they are still obliged to treat Mr and Mrs S fairly, which should encompass their wider knowledge of the consumers and how they've managed their accounts. I don't think it fair to rely solely on the CIFAS marker.

Immediately restricting the accounts would suggest Santander felt there was some urgency, or risk to the bank. In this case I'd expect to see some evidence of this. But here once Bank B removed the marker Santander were happy to continue providing the accounts to Mr and Mrs S. This tells me the CIFAS marker was the only concern they had.

The information on the CIFAS marker doesn't make it seem like there was an imminent risk to Santander. It was recorded over two years prior to it being found by Santander. And I can see that it's clear it's reported in relation to a business current account. But Mr and Mrs S only held personal accounts with Santander.

Looking at Mr and Mrs S' accounts, there doesn't appear to be anything alarming about them either – I've not seen anything to suggest there was anything concerning about the transactions or money held on either account.

Overall, while I accept the CIFAS marker would cause concern to Santander, I'm not satisfied it was fair or reasonable for Santander to restrict the account immediately. There doesn't appear to have been any financial risk to Santander. If Santander wished to end their banking relationship, in accordance with the account terms and conditions they should have given Mr and Mrs S the two months' notice and allowed the account to be used in this time. And in any case the issues with Bank B would've been resolved before then.

I've gone on to consider the impact this restriction had on Mr and Mrs S. I've not seen any evidence of specific financial losses from the accounts being restricted. So, I've gone on to consider compensation for the distress and inconvenience caused.

Santander can't provide a list of direct debits that went unpaid – but based on the account history I think it's likely payments for council tax and other regular commitments were missed. It would have been inconvenient for Mr and Mrs S to then have to make other arrangements for these regular payments.

Mr S was left without banking facilities, which I accept would have been very distressing. Although this is mitigated by Mrs S still having access to her own banking, which means there was some scope for carrying out banking. Santander also said they would allow certain transactions – such as those made in branch, or a transfer to another account. It's unfortunate these weren't suitable for Mr S.

It's also clear that Mr S is a vulnerable individual, and that suddenly losing access to your banking would put him under a great deal of stress.

However, I do have to bear in mind that the root cause of this issue is the CIFAS marker left by Bank B – which they subsequently decided to remove. I'm not considering whether it was fair for Bank B to leave this marker, but I note they decided to remove the marker relatively quickly once Mr S queried it. So, I consider a lot of the distress caused was down to the existence of this marker, which isn't Santander's responsibility.

I've also considered that while it wasn't fair for Santander to restrict the account, they did then leave the door open to reverse their decision if the CIFAS marker was removed. And they duly did so. Although I've no doubt it was a distressing time for Mr and Mrs S, the situation was resolved within two weeks.

Overall, when I consider the distress Santander caused to Mr and Mrs S, I think the amount Mr S has asked for is considerably higher than I would ask Santander to pay. I also don't see it necessary to award compensation to Mr and Mrs S individually – accounts belonging to them both were affected, so I feel a single award is appropriate. It's up to them if they wish to divide it.

I recognise how strongly Mr S feels about this, and my decision will likely come as a disappointment to him. But I consider £250 compensation to be a fair reflection of the distress caused by Santander.

My final decision

My final decision is that I uphold this complaint and order Santander UK Plc to pay Mr and Mrs S £250 for the distress and inconvenience caused by restricting the accounts.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 5 October 2021.

Ombudsman