

The complaint

Miss M complains that Santander UK plc (“Santander”) registered a fraud prevention marker against her without due cause.

What happened

On 15 March 2020, two payments were made into Miss M’s Santander current account totalling approximately £1,050. There were also numerous logins to mobile banking, balance enquiries at ATMs, an ATM withdrawal, nine declined attempted ATM withdrawals, and a transfer out of £900 via mobile banking. The sending bank got in touch with Santander on 26 March to request that the funds were returned as the sender had been the victim of fraud.

Miss M spoke to Santander on 15 and 16 March which she said was due to the fact she had lost her card and couldn’t log on to her online banking. The contents of these calls are in dispute, and unfortunately the recordings were not available. Santander have been able to provide contemporaneous notes made by their call-handlers. They explained that they asked Miss M about the first incoming credit as it was so unusual when compared with her usual account activity. These notes say that in the first call Miss M said the money had been sent by a relative – though she was not sure which one – in order to help her pay for insurance. Miss M said she doesn’t know why they referenced insurance and says she didn’t say this to them. The notes from the second call say that she said she didn’t know anything about the money that was sent to her account. Santander say they asked her to attend a local branch with ID and proof of her entitlement to the funds. In April 2020, after Miss M hadn’t provided any proof of her entitlement to the funds, Santander closed her account and referred Miss M to Cifas to register her on the National Fraud Database for misuse of facility.

Miss M complained, so Santander reviewed their decision. They said that they were satisfied that their original decision was correct as Miss M had received confirmed fraudulent funds into her account, and that she’d given conflicting accounts about what she knew of the funds. So, they thought it was most likely that she had been involved in the fraud, and the decision to refer her to Cifas and close her account had been correct.

Miss M remained unhappy, so she came to this service. She said she was not involved in the activity on her account on 15 March 2020, nor had she allowed someone else to use her account. She said the first time she was aware of the fraudulent credits that went into her account was when she called on 15 March due to her inability to access her online banking. She explained that she had lost her wallet which contained her card and possibly her PIN code around the time of these transactions. She confirmed she had her phone on her person throughout this period. She said she did have her mobile banking details recorded on her phone in a notes application, in her diary at home and on a piece of paper in her wallet.

Our investigator reviewed what had happened and didn’t recommend that her complaint be upheld. They said they accepted that losing her wallet with her card and PIN in it could explain how someone could have attempted to withdraw the fraudulent funds from an ATM. However, their review of Santander’s technical evidence showed that her mobile device was used to transfer the £900 to another account and her testimony had been that her mobile phone had been on her person throughout this period. They felt that this evidence showed

that Miss M was most likely aware of the fraudulent payments into her account and was involved in attempting to withdraw them and moving the funds on via mobile banking – so the Cifas loading and account closure were fair and reasonable in the circumstances of the complaint.

Miss M remained dissatisfied, so the complaint has been passed to me to decide.

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 have reached the same conclusion as our investigator – and for broadly the same reasons.

The type of Cifas marker that Santander asked to be applied is for 'misuse of facility' – relating to the account being used to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Miss M is guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. Cifas guidance 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.”*

So, the relevant finding for me to make is whether I believe Santander have sufficient evidence to conclude that the money sent to Miss M was as the result of a fraud, and that she was deliberately dishonest in relation to this, such that it would be able to escalate its concerns to Cifas. I do think Santander were entitled to do so, I'll explain why.

It is not in dispute that Miss M's account was used to receive and send on fraudulent funds. The sending account holder was tricked into sending the funds as the result of a scam. Miss M denies any knowledge of how these funds came into her account or how they were sent on. So, the question that remains is whether on balance I think it is most likely that Miss M was involved in the receipt, attempted withdrawals and onward transfer of these funds – and whether she was deliberately dishonest in her actions with regards to these funds. And I think Santander are entitled to conclude that she was indeed deliberately dishonest, because:

- Santander's technical evidence shows that Miss M's mobile phone was used to login to her online banking numerous times on 15 March, including to make the transfer of £900. Whilst I accept that someone could have attempted to withdraw money from ATMs if they came across her wallet with her card and PIN within in, Miss M has not been able to provide any explanation or evidence as to how someone else could have used her mobile phone. Her testimony was that she had her phone on her person throughout this period and didn't lose it at any point.
- Santander have also been able to show that they sent a one time password (OTP) to Miss M's mobile phone, which was correctly entered along with an online banking passcode in order to transfer the £900 out of her account. Even if her online banking details were in her purse as she has alleged and an unknown third party could have seen them, they could not have accessed her phone to make the transfer, and to receive the OTP. So, when considering all of this, I see no conceivable way that

someone else was responsible for the online activity on Miss M's account on the day in question.

- Miss M doesn't dispute that she spoke to Santander on the 15 March. The call was made from her registered mobile number – which further supports that she had her phone on her person during this time. I understand that Miss M disputes the contents of this call and says she spoke to them because she couldn't access her online banking. But as the records show that her online banking was indeed accessed from her mobile device that day – I am inclined to believe that the contemporaneous notes made by the call handler are what was most likely discussed during this call.
- The call notes suggest that she said she was expecting these funds from an unknown relative to pay for insurance. The notes also say that she said she was attempting to withdraw some of these funds from her account earlier that day before losing her card. And the notes certainly suggest she knew about the funds – though she was being rather vague around who was sending them to her.
- The notes from the second call demonstrated a change in her account of what happened – Santander's notes regarding what she purportedly said in this call broadly reflect what she has told this service. I've carefully considered Miss M's testimony that she was truly unaware of these funds – and I must say I don't find it particularly plausible. If she were not complicit in the receipt, attempted withdrawals and transfer of fraudulent funds – I am not sure why she would have changed her story.

When considering all of this, I don't think either version of events that Miss M has given to Santander and this service are what most likely happened here. I am of the opinion that it is most likely that Miss M was complicit in the receiving of fraudulent payments. And so, it follows that Santander have met the requirements to refer her to Cifas and I won't be asking them to do anything further.

My final decision

My final decision is that I don't uphold Miss M's complaint.

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

Katherine Jones
Ombudsman