

The complaint

Mr O complains that Santander UK plc (“Santander”) registered a fraud prevention marker against him without due cause.

What happened

On 11 September 2020, Mr O received payments into his account totalling approximately £11,500. Some of these funds were moved to a cryptocurrency account in Mr O’s name with a third-party cryptocurrency platform. Santander received a notification from the sending account, another Santander customer, that these payments were fraudulent. The sender alleged that the money was sent as part of a ‘vishing’ scam in which they received a call purporting to be from Santander and gave the scammer their personal information.

Santander froze Mr O’s account and got in touch to ask him for evidence and explanation of his entitlement to these funds. As nothing was forthcoming, Santander closed his account and referred Mr O to Cifas to register him on the National Fraud Database for misuse of facility. Their arguments for doing so were that:

- They had not been provided with a plausible explanation as to why Mr O’s account had been used to receive and send on fraudulent funds, so they concluded that he was involved in the fraud;
- The logins and transactions on 11 September all took place from a device Mr O had regularly used to access his Santander account, from an IP address he had regularly used, and using his facial recognition security feature on his mobile phone;
- Mr O had not disputed logging in after the first fraudulent transaction had entered and left his account in order to transfer his own funds to his brother’s account;
- Santander had asked Mr O numerous times whether he had been asked to receive and send this money by someone else, or whether he had given someone else access to his account, and he said he hadn’t on each occasion; and
- The payments out utilised an existing mandate to a cryptocurrency account in Mr O’s name.

Mr O wasn’t happy with what had happened. In summary, his initial explanation of events was that he had no idea who had sent these funds or moved them on to the cryptocurrency account in his name. When asked how he was unaware when he had logged on with facial recognition that day, he explained he had happened to transfer his own funds out of his account to his brother’s account but didn’t see the first incoming fraudulent payment. With regard to the cryptocurrency account, he initially said that he thought someone else had accessed it, converted the funds into cryptocurrency and moved the money sent to it onto other accounts that had nothing to do with him.

Santander didn’t accept Mr O’s version of events. They said that none of what he said explained how someone else could have been responsible for what happened on his account, so they were led to conclude he was involved in the fraud himself. So, Mr O came to this service. Initially, he gave the same account as to what had happened. However, he later admitted that he had not been entirely honest about what happened.

Mr O then told our service that an unknown third party had anonymously contacted him via social media. They sent him a photo that showed both his and his brother's debit cards. The third party then asked him if he had an account with the cryptocurrency platform, which he confirmed that he did. The person then threatened that if he didn't help them by completing some transactions that they would remove his own funds from his account. He said at this point the first fraudulent credit was already in his account. He explained that as he had been the victim of fraud previously, seeing his card made him unable to think rationally, and so he just did whatever he was asked by the unknown third party. He said he moved his money into his brother's account for safety and then continued to receive funds and instructions from the unknown third party. He said he did ask them where the money was coming from, but they had said not to worry about it. They did offer Mr O some funds for this, but they never said how much. Mr O said he contacted them when Santander blocked his account to ask them what to do, but they blocked him. He said he never would have done what he did if he hadn't felt threatened.

When asked why his story had changed between the one he first gave Santander, and the story he subsequently told our service, Mr O said he hadn't known how to handle it and didn't understand the consequences of his actions.

Our investigator reviewed what had happened. They didn't recommend Mr O's complaint be upheld. This was because they didn't think Mr O's account of what happened was plausible. They felt it was most likely that if someone was confronted with a stranger having a photograph of their card, they would have contacted their bank immediately to protect their funds. They also felt as he knew the funds coming into his account were not his, he should reasonably have contacted the bank about this too. Mr O didn't agree. He explained that this was having a hugely detrimental impact on his life and his well-being, and wants the Cifas marker to be removed. As he didn't agree, this complaint has come 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 am coming to the same conclusion as our investigator, 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 Mr O 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 Mr O was as the result of a fraud, and that he 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 Mr O's account was used to receive and send on fraudulent funds. Another Santander customer was tricked into thinking they were speaking to Santander and the funds were moved into Mr O's account as the result of this fraud. And Mr O no longer denies knowledge of these funds entering and leaving his account – and conceded that it was him who sent them on to his cryptocurrency account. So the question that remains is

whether Mr O was deliberately dishonest in his actions with regards to these funds. And I think Santander are entitled to conclude that he was indeed deliberately dishonest, because:

- I'm concerned and surprised about the level of detail in Mr O's contradictory accounts of what happened. He went through the entire complaints process with Santander and came to us with a detailed version of events and even a comprehensive evidential submission in support of his first version of events. Whilst I appreciate he could have been scared when events were unravelling on 11 September, I find it strange that he took the time to come up with such an elaborate cover story himself if he were not involved in the fraud himself.
- I've also considered the most recent version of events that Mr O has given us, and I simply do not find the story particularly plausible. I say this because he hasn't been able to provide any evidence of his conversations with the purported stranger on social media due to the temporary nature of the alleged messages.
- Additionally, his current testimony is that the first payment was made into his account before he even knew what was going on. It seems unusual that an unknown third party would send a payment of £1,000 without being certain that they would be able to get Mr O to send it on. This would represent a significant risk of loss to an unknown third party fraudster.
- Mr O also told us that this unknown third party asked him if he had a cryptocurrency account of the type he did have. If this was an integral part of the unknown third party's plans for these fraudulent funds, it again would seem strange that they would forward funds to Mr O before confirming he had such an account.
- Further, Mr O has said that the third party offered him an incentive to help them, but that they had also made him do it under duress. It seems unusual to offer an incentive to someone but also threaten them to do something. This would surely just mean the fraudster would receive less money when they had already managed to persuade Mr O to do their bidding through threats.
- Mr O's current testimony is that he moved his own funds to his brother's account for safe keeping when he knew his account was under threat – but I am confused by this explanation for two reasons. Firstly, if he felt his brother's account was a safe place for his money then the threat would be over when he did this so I am unclear as to why he would have carried on doing the bidding of the unknown third party once he'd ensured the security of his funds. But his testimony was also that he had been sent a photo that showed both his and his brother's cards. It's not clear whether his brother had other accounts – but surely if he was concerned about the security of his financial details, then he should have been concerned about the security of his brother's financial details too – which would make it strange for him to send money to his brother in the first place.
- Either way, I think the most likely thing for someone to do when they think their account security is threatened is contact the bank. Santander would have been able to protect his funds, and prevent transactions happening on his account. And I think this is the logical thing to do if large unknown credits come into your account too.

When considering all of this, I don't think either version of events that Mr O has given us are what most likely happened here. I am of the opinion that it is most likely that Mr O was complicit in the receiving of fraudulent payments. And so, it follows that Santander have met the requirements to refer him 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 Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or

reject my decision before 12 November 2021.

Katherine Jones
Ombudsman