

The complaint

Mr L complains about Santander UK Plc's decision to close his account and register a fraud marker against him.

What happened

In May 2020, Mr L received a credit of £777.18 into his account. The next day, Mr L made two cash withdrawals and a transfer to his own account. From Mr L's other account, he then made two faster payments out.

A few days later, the payment which initially credited Mr L's account was reported as fraudulent by the sending bank. Santander contacted Mr L to ask him about it. As part of this, they also blocked Mr L's account while they carried out a review.

Mr L explained that he was helping out an individual who he knew from University. Mr L explained that this individual said he had lost his bank card and asked Mr L if he could transfer money to his account, which Mr L could then withdraw for him. Mr L agreed. When Santander explained the funds were fraudulent, Mr L said he wasn't aware. He showed his local Santander branch copies of a conversation between him and the individual to support his story.

In June 2020, Santander received an indemnity from the sending bank.

In July 2020, Santander completed their review and decided to end their banking relationship with Mr L. They closed Mr L's account in August 2020 and registered a Credit Industry Fraud Avoidance System (CIFAS) marker against him. Santander gave Mr L access to the money left in his account – around £230. Mr L thinks more should be returned to him – but Santander used money left in Mr L's account to send the fraudulent amount back to the sending bank following the indemnity claim.

Mr L brought the complaint to our service. He maintains that he didn't know the money he received into his account was fraudulent and thinks Santander has made a racist decision because Mr L is an international student. Mr L says he has been unable to open another UK bank account because of the CIFAS marker which has also prevented him being able to get a job.

Our investigator didn't recommend the complaint be upheld. In summary, he said;

- Santander were entitled to return the money to source when they received an indemnity – and therefore was satisfied that the money left after this (around £230) was for Mr L,
- the CIFAS marker was recorded correctly based on the evidence he'd seen – mainly that fraudulent funds did enter Mr L's account and Mr L then moved them on. And based on Mr L's previous links to CIFAS he should have been aware that allowing somebody else to use his account to move money around is prohibited,
- Santander complied with their terms and conditions when closing Mr L's account;
- and, he'd seen no evidence to show that Santander had discriminated against Mr L due to him being an international student.

Mr L disagreed – he asked for an ombudsman to review things. So, the complaint has been passed to me.

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'm not going to ask Santander to do anything differently. I've explained why below.

Were Santander entitled to review, block and close Mr L's account?

Santander are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. Based on what I've seen, I'm satisfied Santander were acting in line with these obligations when reviewing, blocking and subsequently closing Mr L's account. Santander are required to regularly review the relationships they hold with their customers and it's often appropriate for certain transactions to be reviewed. In Mr L's case, he was the recipient of fraudulent funds, so I'm pleased to see Santander took the action to block any further activity on the account while they investigated things.

The money Mr L received has been confirmed as fraudulent. I've reviewed the terms and conditions of Mr L's account. The relevant parts of the terms and conditions state:

"17. Cancellation and closing your account

.....

17.3 It is a condition that you do not:

- a) act abusively, offensively or violently towards our staff; or*
- b) become bankrupt; or*
- c) misuse your account; or*
- d) act dishonestly with us; or*
- e) act in any way to give rise to reasonable suspicion of fraud or other criminal activities.*

And, if any of the above applies, you will be in breach of these Conditions and we can close your account on giving you immediate notice or less notice than that specified in Condition 17.2 in Section 2A."

Based on this, and like our investigator, I'm satisfied Santander complied with these terms. Therefore, I can't reasonably say Santander did anything wrong when deciding to close Mr L's account.

Should Santander have used the money in Mr L's account to pay the indemnity?

Mr L feels that the money left in his account was rightfully owed by him – but Santander used this money to return the fraudulent amount back to the sending bank. I've thought about this carefully.

The practice of providing indemnities in situations like this is well established. It gives business and consumers protection on recalling money when the money in question isn't rightfully owned. In this case, a third-party bank asked Santander to return the money to them because it was reported as fraud by their own customer – that means the third-party bank would have been at a loss. Having considered the circumstances of what's happened with Mr L's complaint, I'm satisfied Santander returning the money to the third-party bank was appropriate. Once Santander honoured the indemnity by returning the money, there

was around £230 left in Mr L's account. I'm pleased to see Santander released this amount directly to Mr L.

In summary, banks must be able to talk to each other to protect their customers' money. And this is what's happened here. The other bank – and their customer – was at a loss because of the payment which credited Mr L's account, so they exercised their right to claim their money back. I appreciate Mr L feels he is at a loss because of this, but the fraudulent money which entered Mr L's account wasn't ever his, so it would be unjust to allow Mr L to have the money while the third-party bank and their customer is at a loss.

Was the fraud marker applied fairly?

Following their review, Santander placed a fraud marker against Mr L's name with CIFAS.

The marker that Santander have filed with CIFAS is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr L is guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern.

The alleged fraud or financial crime here relates to Mr L's account being used to receive and utilise fraudulent funds. The relevant finding for me to make, is not specifically what I conclude was most likely to have been Mr L's intentions and actions in relations to the funds. Rather, my role is to determine whether I think Santander were entitled to escalate their concerns to CIFAS based on the available evidence.

It's not in dispute that the funds that entered Mr L's account were fraudulent and he didn't have any legitimate reason to receive these into his account. So, I have carefully considered whether Santander could conclude he was deliberately dishonest in the receipt and utilisation of these funds and not an unwitting money mule. Having done so, I do think there is enough evidence to suggest that Santander could reasonably conclude Mr L had been deliberately dishonest. I'll explain why:

- The contact notes from Santander show Mr L initially told them the individual who made the transfer was a family member, then that changed to a friend – and at other times the individual is described as a 'classmate' only. I don't think Mr L's story has been consistent.
- Mr L received a previous payment of around £10 from the same individual, and a further payment following the one which is in dispute – therefore I consider Mr L and this individual had an agreement which extends beyond this one payment.
- I don't consider the screenshots from the conversation Mr L has supplied is a full account of the communication. I say that because the first screenshot is from a conversation on '25 May at 10:54pm' and then the conversation skips to another social media platform on a different day, despite it being apparent there are further messages from the same date and time which haven't been shared.
- The screenshots show one message where an individual is holding a copy of Mr L's bank statement with the messages '*This one is yours right*'; '*Can I ask her to pay money into this account*'. There is also a further message which states '*Tell ur guy to check*' and then a message containing bank details which has been forwarded from someone else. I'm not persuaded this is a conversation between two classmates where one has lost his bank card and asked the other to withdraw money so he can buy food essentials and pay accommodation costs.
- I haven't seen any evidence to show Mr L question the individual on why money was coming from one individual, and then transferred to another individual.

- The screenshots of the conversations don't confirm who either party is – I can't see the full details of the individual and therefore can't be satisfied that the conversation is a true account of the circumstances which surround this complaint.
- The screenshots also show the individual who is appearing to be Mr L asking the other individual when he/she can repay the money. However, I can't understand why, if Mr L was only helping out a friend who had lost his bank card, why any money would be owed to Mr L.
- I've seen evidence to show that Mr L has had a previous instance where he allowed somebody to use his account and had a marker registered against him. Therefore, I find it reasonable to suggest Mr L should be aware he is not prohibited to use his account in this way.

In summary, I'm satisfied that by his own admission Mr L gave someone permission to use his account – and it was then used to receive and pass on fraudulent funds. Based on all of the available evidence and arguments, I'm more persuaded that Mr L was an active participant in what happened. Mr L's testimony has been inconsistent and contradictory at points. So, I think it was fair for Santander to register the appropriate fraud marker.

Discrimination

Mr L has said he believes Santander's decision was due to him being an international student. He thinks Santander have racially discriminated against him. This is a serious allegation for Mr L to make, and one I've thought about carefully. I've explained above why I consider Santander's actions to be fair in the circumstances of what's happened. I've seen nothing to suggest Santander made their decision based on Mr L's nationality or any other characteristic. Therefore, I won't be upholding the complaint on this point.

My final decision

For the reasons I've explained above, I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 20 December 2021.

Hayley West
Ombudsman