

The complaint

Mr A complains that Santander UK Plc closed his account and recorded a marker with a fraud prevention agency after he received a payment in to his account. He is also unhappy Santander have withheld these funds from him.

What happened

Mr A held a current account with Santander. In November 2019 he received a payment of £1,000 in to his account. Several weeks later Santander received word that the funds sent to Mr A were the result of a scam. They began to investigate and placed a block on the account. They asked Mr A to prove he was entitled to this money.

Mr A provided some details, but this didn't satisfy Santander who took the decision to close the account. They allowed Mr A to withdraw his wages, but kept the remaining £548.33, pending any indemnities. They also recorded a marker against him with the fraud prevention agency CIFAS.

Thinking this was unfair Mr A raised a complaint – asking for the marker to be removed and the remaining money returned to him. Santander looked in to what happened but didn't feel they'd done anything wrong. They said they had the right to withdraw banking facilities at any time, and prior to doing so a thorough investigation had taken place.

Unhappy with this answer Mr A referred the complaint to our service. One of our investigators looked in to what happened, and asked Mr A to explain the money coming in. Mr A said that he is paid by his employer in to his Nigerian bank account. To access this money he transfers money from his Nigerian account to his friend's Nigerian account. His friend will then transfer the Sterling equivalent to his Santander account.

He said on this occasion his friend told him he didn't have the Sterling available to transfer, but it would come from another person who I'll call S. Mr A didn't think this would be a problem and didn't suspect anything wrong with the transfer.

After Santander asked Mr A about the transaction, he tried to get information from S, but was unsuccessful in getting them to give him anything. But he had recorded a call where he'd spoken to them. He also provided text messages between him and his friend, as well as a statement from his Nigerian bank account.

Our investigator thought the complaint should be upheld. They felt that it was more likely than not Mr A had been an innocent party in this transfer and hadn't known the funds sent were suspicious and had received them in good faith. They felt Mr A had lost out because he had sent funds on from his Nigerian bank account. And they said Santander's account terms didn't allow them to remove funds from the account without prior consent.

On that basis the investigator asked for the CIFAS marker to be removed and the funds in the account returned to Mr A. The investigator also suggested Santander pay Mr A £200 in compensation for the distress and inconvenience of having his account closed.

Mr A agreed with this outcome. Santander agreed to remove the CIFAS marker. However they did not agree to return the funds to Mr A, or pay compensation. They felt that as the funds sent were fraudulent Mr A wasn't entitled to them. They were unsure why they'd need to make provision of this in their terms, as it would be common sense to remove funds that they weren't entitled to. They also said they felt they weren't wrong to record the marker with CIFAS initially, so didn't think the compensation was warranted.

As no agreement could be reached the case has been passed to me to decide. Since the investigator gave their opinion the funds in question have been returned to the sender.

Having reviewed the case I agreed with the outcome the investigator had reached, but for different reasons. In December 2021 I issued my provisional decision, which said the following:

The investigator on this case wrote a detailed opinion setting out the timeline and considerations of this case, so I don't intend to repeat these points as they are well known to both parties. But I also accept the situation has changed somewhat since then, as Santander have returned the funds to the sender. So, I've also taken in to account Santander's own terms and conditions, the relevant industry guidance and good practice in relation to APP scam payments, as well as what I consider to be fair and reasonable.

It's not disputed that the money sent to Mr A was a result of a scam. I understand why Santander would place restrictions on Mr A's account and ask for further information. So, the restrictions placed on the account were reasonable. And the terms of Mr A's account allow them to close the account if it involved in fraud – whether Mr A was aware of this or not. Santander haven't been unfair in doing this.

In this case I'm satisfied that Mr A was an unwitting party to the scam. I say this as he has been able to provide information to show the discussions he had with his friend, and his subsequent attempts to get information from S. The statement from his Nigerian bank shows he transferred money out to his friend on the same day the funds were received, and the value broadly matches the exchange rate of Sterling to Naira at the time. While Mr A does transfer some of the money out, he doesn't seem to be in a rush to move it on or spend it, which he may do if he was aware of the source.

Overall, I've not seen any evidence to suggest Mr A knew about or was actively involved in the fraud. Santander have now accepted this and agreed to remove the CIFAS marker against Mr A.

Before a CIFAS marker is recorded a financial business needs to have carried out sufficient checks to satisfy themselves that fraud or financial crime has been committed. Santander have commented that they agreed to remove the information on the basis of our service's investigation. This suggests to me that Santander didn't carry out sufficient checks at the point they loaded the CIFAS marker – so I'm satisfied it was unfair to apply.

The effect of this is that Mr A had a CIFAS marker against him incorrectly for over a year, which will have been incredibly disruptive to his life and will make it incredibly hard to access mainstream financial services. He's also commented on the distress at being labelled a fraudster, when this wasn't the case. It's fair then that Santander pay £200 compensation to reflect the impact this had on him during this period.

The payment made to Mr A's account came about because of an authorised push payment (APP) scam. The APP Voluntary Best Practice Standards produced by UK Finance in October 2017 sets out the standards for sending and receiving banks to follow when processing a claim for an APP scam.

There are several relevant principles here:

- *The sending bank should notify their customer that because they authorised the transaction, the right to the funds is with the recipient.*
- *The receiving bank will need to investigate and establish (to what extent it is able) whether the account is fraudulent and if funds remain.*
- *The receiving bank will need to find evidence that the recipient has obtained the fund fraudulently.*
- *Following the receiving firm's investigation, identified funds should always be repatriated back to the sending firm at the risk of the receiving firm subject to various exceptions. One of these exceptions is where there is a credible complaint or dispute from the recipient of the funds.*

So, good industry practice at the time said the receiving bank should investigate whether their consumer had received the funds as a party to the fraud. And if they haven't, the receiving bank is under no obligation to return the funds to the sending banks.

In this case Mr A has a credible dispute, as he wasn't a party to the fraud. And he has suffered a loss as he's sent the money from his Nigerian account already. It follows then that Santander weren't under an obligation to return the money to the senders.

The primary duty of a bank is to follow their consumer's instructions and make payments in line with the account mandate. And this mandate is generally laid out in the account's terms and conditions. Having reviewed the terms of Mr A's account I can't see anything in there which would allow them to unilaterally debit the account without prior consent from Mr A. So, I'm not satisfied Santander had the right to do this.

In this case, I think Santander's actions – although guided by a desire to help a genuine victim of fraud – lead to an unfair outcome for Mr A. He has acted in good faith in receiving the funds and has suffered a loss himself because of this. He is also a victim of the fraudster here. Santander weren't under any obligation to return the funds. In any case, I'm not persuaded they had the contractual right to do so. On that basis it isn't fair to deny him the remaining funds in the account.

I said my intention was to direct Santander to do the following:

- Ensure they are not recording any markers against Mr A with CIFAS
- Refund Mr A the £548.33 that was remaining in the account when it was closed, along with 8% simple interest per annum from the date of the block to the date of settlement
- Pay Mr A £200 in compensation to reflect the distress and inconvenience of having his details reported to CIFAS incorrectly.

Mr A responded to say he accepted this as an outcome. Santander responded to say the only way they would be able to release the funds is if the sending bank retracts their claim.

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.

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I've decided to uphold the

complaint for the same reasons I gave in my provisional decision, which are repeated above and form part of this decision.

Based on the evidence I've seen I remain satisfied that Mr A was an unwitting party to this fraud, and so it would be unfair for Santander to record a CIFAS marker against him. This has been accepted by the bank. Considering the length of time the CIFAS marker was present against him and the difficulty this presented him in accessing banking facilities elsewhere I believe a payment of £200 compensation is fair and reasonable in the circumstances.

However, because his account has received fraudulent funds – albeit unwittingly – the terms of his account do allow Santander to restrict the account, and then close it. For the reasons I've explained in the provisional decision, I don't think this was unfair.

In terms of the money remaining in the account, I've considered why Santander has returned this. And as I mentioned in the provisional decision, I understand why Santander would feel this is the right thing to do.

But I also bear in mind that Mr A has a credible dispute regarding the funds and has acted in good faith. Santander haven't been able to demonstrate anything to show Mr A was party to the fraud.

Mr A has also demonstrated that he's suffered a loss, in the transfer from his Nigerian bank account. As I explained in my provisional decision, this means Santander aren't under any obligation to return the funds to the sending bank. This isn't affected by whether that bank withdraws their claim or not. By denying Mr A the funds that remained in the account Santander have in effect ensured he's suffered a double loss – both from his Santander account and his Nigerian bank account.

In any case Santander didn't have a contractual right to remove the money from Mr A's account.

In summary I'm satisfied then with the reasoning given in my provisional decision above, and I partially uphold Mr A's complaint. I think Santander have treated Mr A unfairly when they recorded a CIFAS marker against him, and for denying him access to the funds in the account. As such I think they should return this money to him, and pay him £200 in compensation for the distress and inconvenience of having his details reported to CIFAS incorrectly.

My final decision

For the reasons given above I partially uphold Mr A's complaint and direct Santander UK Plc to

- Ensure they are not recording any markers against Mr A with CIFAS regarding this payment
- Refund Mr A the £548.33 that was remaining in the account when it was closed, along with 8% simple interest per annum from the date of the account block to the date of settlement
- Pay Mr A £200 in compensation to reflect the distress and inconvenience of having his details reported to CIFAS incorrectly

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 February 2022.

Ombudsman