

The complaint

Mr R complains Santander UK Plc (“Santander”) unfairly registered a fraud marker against him and closed his accounts.

What happened

Mr R’s close friend - who I will refer to as Mr M – lived abroad and had fallen seriously unwell. Mr R helped him return to the UK and agreed he could live with him as, amongst other things, he needed to be cared for.

Mr R says Mr M asked if he could transfer over £100,000 of his money into Mr R’s account. Mr R says this was to help Mr M successfully obtain Government benefits that he might otherwise be declined given he held substantive savings.

Shortly after having this discussion with Mr R, Mr M was rushed into hospital. Mr R then transferred the money into his account using Mr M’s online banking credentials. Mr R says he had access to Mr M’s account as they had setup the online banking together and he was authorised to do so.

Mr M’s daughter raised a report the money transferred by Mr R was done fraudulently. The police also got in touch with Mr R about the matter. Mr R says they confiscated his laptop and mobile phone, but he was never arrested nor charged for any offence.

Mr R returned the funds to Mr M’s account. Mr R explained his version of events to Santander.

After looking into the matter Santander reviewed and blocked Mr R’s accounts. Afterwards it decided to close any accounts he held with it and registered a CIFAS fraud marker against him. Sadly, Mr M died whilst in hospital some time later.

Unhappy with Santander’s actions, Mr R complained.

Santander did not uphold Mr R’s complaint, but it did give him £100 as a goodwill gesture for costs he had incurred and the time it took to look into his complaint. Mr R referred his complaint to this service.

Mr R made several points in relation to his complaint, which included Santander not paying his credit card balance and incurring other costs. Mr R did have access to some of his funds whilst the account was blocked for review. Mr R withdrew £5,000 during this time which he says was for essential living costs.

But Mr R has since told our Investigator he now only wants us to consider the points about his accounts being closed, and the CIFAS marker being registered against him. So, my decision will only focus on these points.

Our Investigator looked into the matter. In summary they found:

- As Mr M has passed, it’s not possible to know for sure if he gave Mr R permission to

transfer the funds

- As Mr R was seriously unwell, and as he had substantive savings, it's unlikely he'd want to claim or for that matter, was concerned about benefits
- It doesn't make sense Mr R went ahead with transferring the funds only shortly after discussing it with Mr M, and him being taken to hospital. Especially as Mr R says he was uncomfortable going ahead with the plan because it was benefit fraud.

So it's less likely Mr M would've been motivated to commit benefit fraud, and there's nothing to show Mr R was compelled to do so on his behalf. So, because of that, it's likely Mr M didn't consent to the payments

- Santander has enough information to place a marker against Mr R.

Under CIFAS' principles, a marker can be added as long as there is strong evidence to confidently report the matter to the police. So the police closing their investigation is not relevant here. And, Santander received information from Mr M's bank that the funds were obtained fraudulently

- The police closed its investigation without charging Mr R, but he likely transferred the funds without Mr M's permission
- Santander was entitled to close the account in the way it did, and this was in line with its terms and conditions

In response, Mr R has made the following key points:

- He commenced with the transfers as Mr M could see no other way of getting home help without him doing so
- Mr M told him in hospital his daughter was angry that he had jeopardised her inheritance
- The complaint against him was malicious

As Mr R didn't agree with what our Investigator said, the matter 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've decided not to uphold Mr R's complaint. I know this will disappoint him, so I'll explain why.

CIFAS marker

The marker Santander have filed with CIFAS is intended to record there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds.

In order to file such a marker, Santander's not required to prove beyond reasonable doubt Mr R is guilty of a fraud or financial crime, but they must show there are grounds for more than *mere suspicion* or concern. CIFAS 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”*

What this means in practice is that a bank must first be able to show fraudulent funds have entered Mr R’s account, whether they are retained or pass through the account. Secondly, Santander will need to have *strong* evidence to show the consumer was deliberately dishonest in receiving the fraudulent payments and knew it was, or might be, an illegitimate payment.

A marker shouldn’t be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. So, I need to consider whether Santander has enough evidence to meet the standard of proof and load a marker for misuse of facility with CIFAS.

Santander say it received notification from the police the funds Mr R received from Mr M’s account were fraudulent. It adds that Mr M’s bank shortly got in touch to say the funds Mr R received were the proceeds of fraud. Santander was told Mr R had obtained Mr M’s banking details and transferred the money without his permission. In other words, they were unauthorised transactions.

Santander contacted Mr R and its internal notes show he said he agreed to look after Mr M’s money, so he was under the limit to be able to claim benefits.

It’s unfortunate Mr M has now passed, and that he was unable to give any kind of information to show he had authorised Mr R to transfer the money using his online banking security credentials.

Where evidence is incomplete or inconclusive, I can reach a decision based on what I think is most likely – that is, the balance of probabilities.

Having said that, I don’t think I need to find whether or not I think Mr M did authorise these transactions. But, as I’ve already said, whether the evidence available showed there were reasonable grounds for Santander to believe an identified fraud or financial crime has been committed or attempted. And that the evidence was clear, relevant and rigorous so that Santander could confidently report the matter to the police.

The police were already involved and had taken Mr R’s computer and phone for further investigation as it has received a report the funds received were fraudulent. And given the account the money was transferred to wasn’t used much and contained small amounts of money; I think it was reasonable for Santander to conclude that fraud was likely being committed.

Mr R then told Santander he had transferred the funds to help Mr M hide them to be able to get benefits. I’ve listened to the call Mr R had with our investigator, and in it he is aware he is committing fraud by potentially helping Mr M deceive the relevant Government department to obtain benefits.

I note Mr R says he wasn’t happy about doing the transfers and holding the money, and he had told Mr M that. But Mr R is aware he was potentially committing fraud albeit that he is remorseful about what happened. It figures then that he was most likely committing a fraud or financial crime here – something he told Santander about when it spoke to him at the time.

So it follows Santander had *more* than reasonable grounds to believe a fraud or financial crime had been committed. And the evidence was clear, relevant and strong enough for Santander to report it to the police, albeit they were already involved in the matter.

This means I'm satisfied the CIFAS marker was added fairly by Santander.

Mr R argues that as the police took no further action by arresting or charging him, the marker should now be removed. Santander say it hasn't had any confirmation from Mr M's bank that no crime was committed, so it won't remove the marker.

Mr R has sent me a record of email correspondence between him and the investigating police officer. It says, *'I am writing to advise you that we will taking no further action in respect of the allegations of fraud and theft against you'*.

Mr R has not been exonerated of any wrongdoing here, only that the police won't be taking any further action. I accept it's likely the police wouldn't have stopped the investigation if they thought he had been fraudulent. But equally it may have decided not to take any action as the money had been returned or for some other rationale.

As there isn't anything to show unequivocally that Mr R hadn't committed a crime by the police, and as he himself admits to being party to a conspiracy to defraud and moved the funds to action that, I'm persuaded Santander is acting fairly and reasonably by not removing it.

Account restrictions and closure

Santander has important legal and regulatory obligations it must meet when providing accounts to customers. These obligations are ongoing, so do not only pertain to when an account is opened.

To comply with its obligations, Santander may need to review an account and/or restrict its customer's access. If Santander didn't comply with its obligations it could risk serious sanction. In order to meet these requirements, Santander is entitled to ask a customer for more information about how they use their account, including payments which are made into an account.

Having looked at all the evidence, I don't believe it was unreasonable in the circumstances for Santander to block Mr R's account and ask him for information relating to activity on the account. So, whilst I accept this matter would have caused Mr R inconvenience, I can't say Santander treated him unfairly when it blocked his account.

Santander later took the decision to close Mr R's accounts. A bank is entitled to close an account just as a customer may close an account with a bank. But before a bank closes an account, it must do so in a way, which complies with the terms and conditions of the account.

The terms and conditions of the account, which Santander and Mr R had to comply with, say that it could close the account. The terms go onto explain what those circumstances are, and when Santander can close it immediately.

Given the information presented to me by Santander and Mr R, and having looked at the wording of the applicable terms, I can't say Santander acted unfairly in closing Mr R's account with immediate effect. I understand its concern.

So it follows that I'm satisfied Santander was entitled to close the account in the way that it has done.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 April 2022.

Ombudsman