

The complaint

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

What happened

In May 2015, Mr K paid a £20,000 cheque into his account. A couple of days later, the cheque returned unpaid and Santander carried out a review into Mr K's account. Santander contacted the sending bank of the cheque and it confirmed it had suspicions of the legitimacy of the cheque. Santander contacted Mr K and asked him to show his proof of entitlement to the cheque and details on where it had been sent from. Mr K didn't send Santander any proof of entitlement.

Following their review, Santander decided to close Mr K's account and registered a Credit Industry Fraud Avoidance System (CIFAS) marker against him.

Mr K complained to Santander in 2015 about the closure of his account and says he didn't receive a response from them. Santander confirm they did respond to Mr K's complaint. In 2020, Mr K learned about the CIFAS marker registered against him and got back in touch with Santander. Santander responded to Mr K's complaint and confirmed their decision remains. Santander sent their response to an old address despite Mr K giving them his new address – so Mr K didn't receive it.

Mr K brought the complaint to our service. He said finding out about the CIFAS marker has had a profound effect on his health and he's been living with anxiety. He also said he hasn't been able to open mobile phone contracts and had to withdraw from a job contract due to the CIFAS marker.

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

- the CIFAS marker was recorded correctly based on the evidence she'd seen and what was available to Santander in 2015 – mainly that the cheque was raised as suspicious by the sending bank and Mr K didn't provide any additional evidence to Santander to confirm his eligibility of it;
- Santander were entitled to review and close Mr K's account;
- she'd seen no evidence of poor customer service in 2015, and while Santander sent their correspondence to the 2020 complaint to the wrong address, this didn't have an overall impact.

Mr K responded to our investigator's view and wasn't happy with it. He said he thought our investigator's findings neglected most part of how Santander abuse their customers but didn't provide any further evidence or arguments relating to the circumstances of his complaint.

As an agreement couldn't be reached, 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.

Were Santander entitled to review, block and close Mr K'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 K'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 K's case, the cheque he paid into his account was raised as suspicious, so I'm pleased to see Santander took the action to block any further activity on the account while they investigated things.

Santander asked Mr K for further information relating to the cheque – and to confirm his eligibility of the money. Mr K didn't provide any additional evidence and therefore, Santander continued with their own review. They received information from the sending bank which they have shared with our service in confidence. I'm sorry I can't share the full details with Mr K but I'm satisfied based on the evidence I've seen that Santander were entitled to close Mr K's account and did so by complying with the terms and conditions of the account.

Therefore, I can't reasonably say Santander did anything wrong when deciding to close Mr K's account.

Was the fraud marker applied fairly?

Following their review, Santander placed a fraud marker against Mr K's name with CIFAS. I've looked at whether it was fair of Santander to apply the marker, based on the evidence and what the rules say about applying such markers.

When a business is a member of CIFAS it can record a marker against an individual customer when that customer has used their account fraudulently (a 'misuse of facility' marker). This type of marker will stay on record for six years and will usually make it difficult for a customer to take out new financial products as Mr K has encountered. In order to file such a marker, Santander aren't required to prove beyond reasonable doubt that Mr K is guilty of a fraud or financial crime, but they must show that 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 that either there was an attempt to put fraudulent funds into Mr K's account or fraudulent funds have entered Mr K's account and were either moved on or retained. Secondly, the bank will need to have strong evidence to show that Mr K was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

I've thought about whether Santander have provided evidence that fraudulent funds were attempted to enter Mr K's account and he knew they were, or might be, illegitimate payments. And I think they have; I'll explain why below:

- I'm satisfied the evidence Santander provided regarding the cheque confirm the

cheque was not genuine.

- Mr K didn't provide any information relating to his eligibility of the cheque in 2015 when Santander queried it.
- Mr K didn't use his Santander account for a prolonged period before the cheque was paid in.
- Mr K has confirmed the sender of the cheque was a close friend of his and that the cheque returned unpaid due to insufficient funds – but based on the evidence provided, I'm satisfied this wasn't the case.

I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from banks as confidential for a number of reasons – for example, if it contains information about other customers, security information or commercially sensitive information. As part of this complaint, some of the information which has been provided is information that we considered should be kept confidential.

I'm sorry I can't share the full reasons with Mr K but I'm satisfied based on the full circumstances of this complaint and the evidence provided that I think Mr K was complicit in attempting to receive the fraudulent payments. It follows that Santander met the requirements to load a CIFAS marker and I won't be asking the bank to do anything further. I'm also aware that due to the time which has passed, the CIFAS marker is no longer registered against Mr K.

The customer service provided to Mr K

As part of this complaint, Mr K has raised concerns relating to the customer service he received from Santander. Due to the time passed, Santander haven't been able to provide me with a copy of the call recordings which took place in 2015. I'm aware Mr K thinks they should have kept these phone calls, but they're not required to keep information forever. I'd expect the bank to keep the relevant information for the time the CIFAS marker is in place, but as that time has now passed, I find it reasonable the phone calls aren't available. Based on this, I can't fairly uphold Mr K's complaint on this point as I haven't seen any evidence from either party.

I'm aware Santander sent their response to Mr K's complaint in 2020 to Mr K's previous address – despite Mr K informing them of his new address. I don't doubt this would have been inconvenient, but based on the circumstances of the complaint, I don't think it had an overall impact. I say that because the complaint was in relation to a CIFAS marker recorded in 2015 – and therefore would have been due to expire in 2021. I'm also satisfied Mr K was aware of our service as he had mentioned to Santander that he would bring a complaint to our service if they didn't respond to him. Because of that, while I agree Santander should have updated Mr K's correspondence information, Mr K was aware he could bring the complaint to our service, so I don't think this error on Santander's part caused any delays or real upset.

Overall, I'm satisfied Santander were entitled to review and subsequently close Mr K's account in 2015. And I think they had sufficient evidence to register a CIFAS marker against him at the time. I recognise Santander could have handled things better by ensuring Mr K's address was updated when responding to this complaint, but based on the full circumstances of what's happened, I don't require them to pay any compensation.

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 K to accept or

reject my decision before 12 April 2022.

Hayley West
Ombudsman