

Complaint

Mr M is unhappy that Santander closed his account and record a Cifas marker against his name.

Background

Mr M had an account with Santander. In November 2020, the account received two payments that Santander were concerned about. Santander closed Mr M's account and loaded a Cifas market against his name.

The first payment was for £1,000. This was sent from the account of someone unknown to Mr M. Shortly after it was sent, the sender reported to their bank that they were the victim of an investment scam perpetrated over social media.

The day after the funds were received into Mr M's account, he withdrew them in cash - £300 at an ATM and £700 over the counter in his local branch. He says he gave this money to a friend - who I'll refer to as Mr K. Mr M says that Mr K owed him money and that he believed this payment was being sent to him to pay off that debt. He said that part of that debt was a result of a purchase his sister had made on Mr K's behalf. This was for a computer monitor and was for just over £400. Mr M provided a screenshot of a page on the Amazon website confirming this order was placed back in 2018. He says Mr K contacted him shortly afterwards and explained that his financial situation had changed and that he now needed the money back. He says he was promised that the debt would be paid off again in the future.

The second payment was also for £1,000 and was sent by an individual who Mr M knows, but not well. He says that this person deposited the money into his account having obtained the details from Mr K. They asked him to withdraw the money in cash and they'd collect it from him in person. Mr M says that he hadn't agreed to any such arrangement and didn't want to have any further involvement with this person. He knew they were connected with Mr K and so he transferred the £1,000 into his account. He added a reference – "*mum onto me*".

Santander wasn't persuaded by Mr M's explanations as to how he received these payments and why he moved them on out of his account in the way that he did. It decided to close Mr M's account and it was satisfied it had strong enough evidence to justify a Cifas loading.

Mr M thought Santander had treated him unfairly and so he referred a complaint to this service. It was allocated to an Investigator who didn't uphold it. The Investigator didn't find Mr M's explanation of the source of the funds to be a credible one and, in the light of the clear scam report made to the sending bank in connection with the first payment, he didn't think Santander had done anything wrong in loading a Cifas marker against Mr M's name.

Mr M disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and issue a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The bar for applying a Cifas marker is a high one. For Santander to do so it must satisfy itself that a fraud or financial crime was committed or attempted. Cifas also requires that Santander's evidence of the subject's conduct must be clear, relevant and rigorous such that it could confidently report it to law enforcement. It cannot apply such markers based on mere suspicion.

I can't know for sure what happened with these two payments. I only have the limited evidence that has been collected by the banks involved in the payments and I have Mr M's explanation of events. Where there is such uncertainty, I must reach a decision on the balance of probabilities – that is, whether the available evidence suggest that it's more likely than not that Mr M is complicit in fraud or a financial crime. I've considered this carefully and I'm satisfied that Santander has acted fairly and reasonably in loading a Cifas marker here.

I've seen the report in connection with the first payment that was made to the sending bank and it's unambiguous. That individual told their bank that they'd fallen victim to an investment scam in which they were told they could make a payment to someone who would carry out trades on their behalf. It's not insignificant, therefore, that the reference "*trade funds*" was recorded when the payment instruction was given.

I'm also don't find Mr M's explanation as to why he thought he was due to receive £1,000 from Mr K to be a particularly credible one. Mr K apparently called Mr M and explained that £1,000 had been paid and explained why it hadn't come from Mr K's account. The same day Mr K called again and explained that his financial circumstances had changed. He needed the money back and that it had to be in cash. I'm surprised that Mr M wouldn't have found it strange that his friend's financial circumstances would've changed in such a short space of time and that he didn't appear to ask for an explanation as to why the repayment had to be in cash, rather than a bank transfer.

Mr M has not been able to submit any evidence to show that there was an arrangement with Mr K to borrow money. He has submitted a screenshot showing that an expensive monitor was ordered through Amazon and delivered to Mr M's address. I don't find that particularly helpful – there's nothing to show the purchase was made for the benefit of Mr K or that he'd promised to repay it. It's also not clear to me why this purchase would've been particularly useful or relevant for Mr K's business – Mr M has told us that this was the primary reason why he'd lent money to Mr K.

I've considered the possibility that Mr M received funds into his account without really appreciating where they'd come from or what he'd agreed to do. But I think the evidence suggests that's unlikely, in particular the fact that when he moved on the second payment by transferring it to Mr K and he wrote as the reference for that payment "*mum onto me*" that strongly suggests that Mr M had been complicit in the arrangement, albeit that he was having second thoughts about it.

Overall, I'm satisfied that the weight of the evidence supports Santander's decision to load a Cifas marker.

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 M to accept or reject my decision before 23 April 2022.

James Kimmitt
Ombudsman