

## Complaint

Mr G is unhappy that Santander UK Plc (“Santander”) recorded a fraud prevention marker against him. He says he made a one-off innocent mistake and its unfair for the marker to remain in these circumstances.

## Background

In February 2021, Mr G’s Santander account received a transfer of £500 from a third-party. On the day the funds arrived, £250 was withdrawn at a cash machine and transfers of £100 and £105 were made to another account in Mr G’s name. Shortly afterwards, Santander received a notification from the bank which sent the payment stating that the payer of the funds had reported being a victim of fraud. Santander reviewed Mr G’s account, decided to close it and also record a fraud prevention marker against Mr G.

Mr G was unhappy with Santander’s actions and made a complaint. Santander looked at Mr G’s complaint and didn’t uphold it. As Mr G remained dissatisfied he referred the matter to our service.

One of our adjudicators looked into Mr G’s concerns. She didn’t think that Santander had done anything wrong or treated Mr G unfairly and so didn’t recommend the complaint be upheld. Mr G disagreed and so the complaint was passed to an ombudsman for a final decision.

## My findings

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

The marker that Santander has filed 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, it isn’t required to prove beyond reasonable doubt that Mr G is guilty of fraud or a financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance 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 Santander must first be able to show that fraudulent funds entered Mr G’s account, whether they were retained or merely passed through. Secondly, Santander also needs to have strong evidence to show that Mr G was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Mr G allowing someone else to use his account in order to receive an illegitimate payment. But a marker shouldn’t be registered against someone who was unwitting; there should be enough evidence to show complicity.

To meet the standard of proof required to register a fraud marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

In order to determine Mr G's complaint, I need to decide whether I think Santander had enough evidence to show fraudulent funds entered Mr G's account and that his actions suggest he was complicit in this. And having considered everything, I find that Santander has done this here. I'd like to explain why in a little more detail.

Santander initially placed a restriction on Mr G's account on 15 February 2021, after it received a notification from a third-party bank that its customer had reported being tricked into depositing funds into Mr G's account. By this stage the funds in question had already left Mr G's account through a series of transfers to another of his accounts and cash machine withdrawals. Santander attempted to call Mr G and also wrote to him in an effort to give him the opportunity to explain how the funds came to arrive in his account.

In early March 2021, Mr G told Santander that the payment into his account was the proceeds from the sale of a motocross bike. Mr G mentioned the name of the person who he thought bought the bike from him and said he was someone he met at a local track and he was struggling to get hold of him. Mr G then once again called Santander a week later providing a different name for the purchaser and also said he'd be unable to contact the seller because his phone had been confiscated by the police. It's also worth noting that neither of the names Mr G provided Santander with matched the payee of the £500.

When Mr G referred his complaint to us, he then told us he was asked to accept the £500 payment by someone who he thought was a friend. He said his friend told him it was a payment for a motocross bike and he believed him. And he allowed the payment to be made into his account as a favour to this friend. In a subsequent email to our service, Mr G then said that this friend asked him to receive the payment into his account because he didn't have his own account as a result of previous criminal activity.

I've thought about what Mr G has said. But, in truth, given the inconsistent versions of events he's provided throughout the course of the investigation, it's difficult to know what happened or for me to place much weight on what Mr G has said. That said, even if I were to take Mr G's argument at its best and accept that he allowed the payment to be made to his account on behalf of a friend, he nonetheless knowingly allowed a payment to be made into his account on behalf of someone who didn't have an account of their own as a result of previous criminal activity. In these circumstances, I think that Mr G ought to have known that there was a significant risk that he might have been allowing his account to be used for illegitimate purposes.

So overall and having considered everything, I'm satisfied that Santander did have sufficient evidence to show that fraudulent funds entered Mr G's account. And it was also reasonably entitled to conclude that it was more likely than not Mr G was complicit in this. As this is the case and even though it was only a single credit into Mr G's account which triggered suspicion, despite the many others for significant sums which Mr G has spoken about, I don't think that it was unfair for Santander to record a fraud prevention marker in the circumstances that it did.

I now turn to the closure of Mr G's account. I know that since his complaint has been with us Mr G has said he accepts Santander doesn't have to provide him with an account. But for the sake of completeness and as it formed part of Mr G's initial complaint, I think it's worth me explaining that the terms and conditions of Mr G's account permitted Santander to close

it where it was used “*in any way to give rise to reasonable suspicion of fraud or other criminal activities*”. I’ve already explained why I think Santander was reasonably entitled to conclude that Mr G’s account had been used for fraudulent purposes when explaining why it didn’t act unfairly in recording the fraud prevention marker.

As this is the case, I’m also satisfied that, for much the same reasons, the terms and conditions permitted Santander to close Mr G’s account – especially as it provided him with one month’s notice before doing so. And I’m therefore not upholding Mr G’s complaint on this basis either.

I appreciate this will be very disappointing for Mr G – especially in light of the ongoing impact he’s said the fraud marker is having on him and he strongly believes that the amount of the funds in question didn’t warrant the level of scrutiny it received. But I hope he’ll understand the reasons for my decision and that he’ll at least feel his concerns have been listened to.

Furthermore, as our adjudicator has explained Mr G might find that he’s able to open an account with another bank as long as he applies for a Basic Bank Account, rather than a full Current Account or any such equivalent.

### **My final decision**

For the reasons I’ve explained, I’m not upholding Mr G’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 12 May 2022.

Jeshen Narayanan  
**Ombudsman**