

Complaint

Miss B is unhappy that Santander UK Plc (“Santander”) closed her account and recorded a fraud prevention marker against her.

Background

In January 2020, Santander wrote to Miss B to inform her that her account had been referred to its investigation team for review and as a result of its investigation it had taken the decision to close her account with immediate effect.

Miss B was unhappy and complained. Santander looked at Miss B’s complaint and didn’t uphold it. As Miss B remained dissatisfied, she referred the matter to our service. After learning that Santander had also recorded a fraud prevention marker against her as a result of its investigation into her account, Miss B also asked us to consider this matter too.

One of our adjudicators looked into Miss B’s concerns. He thought that Santander had reasonable grounds to close Miss B’s account. But he didn’t think that Santander had done enough to show that Miss B was complicit in fraud and so it unfairly recorded the fraud prevention marker against her. Santander 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 Miss B is guilty of a fraud or 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 Miss B’s account, whether they were retained or merely passed through. Secondly, Santander also needs to have strong evidence to show that Miss B was deliberately dishonest in receiving any fraudulent payments and knew they were, or might be, illegitimate payments. This can include Miss B allowing someone else to use her 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 Miss B's complaint, I need to decide whether I think Santander had enough evidence to show fraudulent funds entered Miss B's account and that she was complicit in this. It's important to note Santander had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably.

Having considered everything, Santander appears to be arguing that its systems flagged Miss B's account had been in receipt of funds, which had previously been reported as fraudulent. In other words, Miss B's account ended up as the eventual destination of funds that had been previously been reported as having been fraudulently transferred to someone else.

The terms and conditions of Miss B's account permitted Santander to close it without notice where it was used *"in any way to give rise to reasonable suspicion of fraud or other criminal activities"* Given fraudulent funds had found their way to Miss B's account, I think that Santander was reasonably entitled to suspect fraud *may have* taken place and legitimately entitled to reach the conclusion that there was an immediate risk in keeping Miss B's account open. Therefore, I think that Santander was entitled to block and close Miss B's account in the way that it did.

That said, even though Santander may have had reasonable grounds for concern about the usage on Miss B's account and this was enough to justify its closure, it doesn't automatically follow that Santander was entitled to register a fraud prevention marker. This is because in order to fairly record a fraud marker Santander not only needs to have sufficient evidence to show that fraud may have taken place, it also has to have sufficient evidence to show that Miss B was complicit in any fraud that took place. And I don't think that Santander has that here.

Santander has said that when Miss B was asked about these payments she said that she allowed a family friend who was staying with her, at the time, to receive payments from his sister into her account and let him use her card to withdraw the funds. Miss B said that she eventually asked the family friend to leave after she found out he was stealing from her.

I've thought about what Miss B has told Santander and there isn't anything I've seen in the evidence provided which directly contradicts what she said. There are regular credits into Miss B's account from the parties who sent the funds in question and which elicited Santander's suspicion. But there's no suggestion that all of the funds transferred were fraudulent. So it seems entirely possible to me that Miss B was allowing someone she knew to receive payments from someone else she knew – for example, allowing a family friend to receive payments from his sister.

More importantly it is Santander's responsibility to demonstrate that Miss B was knowingly and dishonestly part of any fraud. And I think that it has failed to do that here. Santander needs to have relevant and rigorous evidence such that it could report the matter to the police. In other words, reasonable grounds for concluding that Miss B acted dishonestly when she allowed her account to be used because she knew the funds in question were fraudulent.

Simply pointing out that fraud may have taken place, sometime earlier in the sequence of events, just isn't enough to meet what is a high bar. This is especially the case seeing as Miss B's version of events here appears to be plausible. Furthermore, there isn't anything to

support Miss B having made a financial gain either. So I'd question why she'd knowingly participate in a fraud where she didn't benefit.

Overall and having considered everything, while I think that Santander had sufficient grounds to close Miss B's account, I don't think that it had sufficient evidence to meet the test for recording a fraud marker against her. As this is the case, I think that it was unfair for Santander to record a fraud prevention marker in the circumstances that it did. So I'm upholding Miss B's complaint and Santander needs to any and all fraud markers it has recorded against her.

My final decision

For the reasons I've explained, I'm partially upholding Miss B's complaint. Santander UK Plc should remove any and all fraud markers it has recorded against Miss B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 17 August 2022.

Jeshen Narayanan
Ombudsman