

## Complaint

Miss K is unhappy that Santander UK Plc (“Santander”) recorded a fraud prevention marker against her.

## Background

In June 2019, Miss K’s account received a payment of £5,000.00 from a third-party. Santander immediately placed a block on Miss K’s account and asked her to prove her entitlement to the funds. By August 2019, Santander wasn’t happy with the evidence provided in relation to the £5,000.00 payment. But it was satisfied with the evidence provided in relation to the rest of the funds in the account and released them. Nonetheless, it decided to close Miss K’s account at this stage.

A number of months later, Santander received an indemnity request from the bank which sent the £5,000.00 asking for the funds to be returned as its customer had reported being a victim of fraud. Santander then went on to register a fraud prevention marker against Miss K.

In 2021, after learning that Santander had recorded a fraud prevention marker against her, Miss K complained to Santander. Santander looked at Miss K’s complaint and didn’t uphold it. As Miss K remained dissatisfied, she referred the matter to our service.

One of our adjudicators looked into Miss K’s concerns. She didn’t think that Santander had done enough to show that Miss K was complicit in fraud and so it unfairly recorded the fraud prevention marker against Miss K. Despite being given additional time to do so, Santander didn’t provide a substantive response. 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 with 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 K 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 K’s account, whether they were retained or merely passed through. Secondly, Santander also needs to have strong evidence to show that Miss K was

deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Miss K 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 K's complaint, I need to decide whether I think Santander had enough evidence to show fraudulent funds entered Miss K'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 matters, it does appear to be the case that the funds which credited Miss K's account in June 2019 were fraudulent. So I can understand why Santander had concerns about the usage on Miss K's account. However, as I've already explained, this in itself isn't enough to register a fraud prevention marker against a customer. Santander also has to produce sufficient evidence to show Miss K was complicit in fraud. And I don't think that it has done that here.

Santander says that when Miss K was asked to prove her entitlement to the funds she provided a lot of information which didn't relate to this payment. However, I don't think that this is surprising given she was initially asked to prove her entitlement to all the funds in her account for a number of months. And given there seems to be no dispute that Miss K was out of the country when this all took place, I don't think the delay in her responding to Santander or providing what was requested is indicative of any complicity here.

In any event, Miss K has told us the payment was for the purchase of foreign currency. She has provided us with evidence from an agent showing a foreign currency transfer amount roughly equivalent to £5,000.00. She's also provided us with messages to and from the agent and from the person who received the foreign currency to the agent.

Furthermore, Miss K has also provided a copy of the statement from the UK account the funds were transferred from, which was sent to the agent as proof the £5,000.00 was sent. This was sent to the agent when Miss K got in contact with the agent after matters relating to this dispute began. All of this information does appear to indicate that Miss K was reasonably entitled to believe she was engaging in a legitimate transaction.

More importantly it is Santander's responsibility to demonstrate that Miss K was knowingly part of the 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, a reasonable suspicion Miss K was a willing participant in any fraud. Simply pointing out that fraud may have taken place just isn't enough to meet what is a high bar. This is especially the case seeing as Miss K's version of events here appears to be both plausible and persuasive.

Furthermore, there isn't any evidence indicating that Miss K made a financial gain either as she appears to have transferred the equivalent of £5,000.00 in foreign currency from one of her accounts abroad. So I've not seen anything to suggest that Miss K benefitted from the fraudulent funds and would question why she'd knowingly participate in a fraud where she didn't stand to benefit.

Overall and having considered everything, I don't think that Santander had sufficient

evidence to meet the test for recording a fraud marker against Miss K. As this is the case, I think that it was unfair for Santander Bank to record a fraud prevention marker in the circumstances that it did. So I'm upholding Miss K's complaint and Santander needs to any and all fraud markers it has recorded.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 29 July 2022.

Jeshen Narayanan  
**Ombudsman**