

The complaint

Mr K has complained that Santander UK Plc registered a marker against him at CIFAS, the national fraud database.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

In January 2020, Mr K's Santander current account received the proceeds of fraud. This was then quickly paid on, through attempted cash withdrawals using Mr K's card and PIN, and through transfers to another account in Mr K's name using his mobile phone. Then in February 2020, a suspicious cheque was paid into Mr K's account at a branch, again using his card and PIN.

Santander asked Mr K for evidence he was entitled to these funds. Mr K initially suggested it might be money from his employer, and said he'd get evidence. He later confirmed it wasn't from his employer, he didn't recognise the account activity, and he didn't know anything about what had happened. He said he hadn't made any of those payments or paid in the cheque. Mr K confirmed his card was always with him and he still had it, but later said it had been lost or stolen. He confirmed he hadn't let anyone else have his PIN or security details. He still used the same mobile phone afterwards.

Santander closed Mr K's account and registered a marker at CIFAS. They didn't see a likely way that anyone could have paid on the fraudulent funds without Mr K's permission.

Our adjudicator looked into things independently and didn't uphold the complaint. Mr K didn't agree, so the complaint's 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.

In order to register this marker, Santander were not required to prove beyond all reasonable doubt that Mr K had done something wrong. They did need to have reasonable grounds to believe that he'd misused his account, which went beyond a suspicion or concern, and which had appropriate supporting evidence. Having carefully considered everything that both sides have said and provided, I think Santander did have sufficient grounds to register this marker. I'll explain why.

I'm satisfied from Santander's technical evidence that the online transfers were made using Mr K's mobile phone, with one-time passcodes sent to the same phone number he still uses now. I'm satisfied that Mr K's genuine card and the correct PIN were used to pay in the cheque, and that this was also the case for the disputed cash withdrawals. And I can see from the official report that the funds Mr K received were the proceeds of fraud.

In order to withdraw and send on the fraudulent funds, the person making the payments needed Mr K's physical card, the correct PIN, his mobile phone, and his online banking security details.

Mr K says he lost his card. But there's no record of him reporting it as lost or stolen at the time – he only said this after the fact. Indeed, having listened to the calls involved I can see that he previously confirmed that he still had his card and that it was always with him. And most importantly, I can see that Mr K made genuine, undisputed card payments *after* the disputed ATM withdrawals. So he did have his card at the time. And if Mr K had his card before and after, then it's difficult to see how anyone used it without his permission. It is not likely or plausible that a fraudster would steal Mr K's card but then needlessly give it back to him, nor that they could do so without him noticing.

Similarly, Mr K did not report his mobile phone as lost, and I can see that he was still using it afterwards. The person using his online banking also needed Mr K's security details, which he confirmed no one else knew. And the number the one-time passcodes were sent to was the same number that Mr K still uses now. So I'm satisfied that Mr K received those one-time passcodes. These passcodes were then used to pass on the fraudulent funds – again, using Mr K's registered mobile device. As far as I can see, there is not a likely or plausible way that someone could have made these payments using Mr K's mobile phone without his consent and without him noticing.

It also looks like Mr K was frequently checking his online banking at the time, and that he would have seen the fraudulent funds coming into his account, as well as the cash withdrawals and transfers out. Indeed, he continued using his online banking to make genuine transfers afterwards. It would have been clear from the recipient's name and the payment reference that the fraudulent credits didn't relate to any payments he was expecting. And if Mr K didn't make the cash withdrawals or online transfers, they would have stood out to him – not least given that they involved hundreds of pounds leaving his account. Yet despite seeing these on his online banking, Mr K didn't tell Santander anything was wrong until later, when they got in touch with him. Again, he only said that the payments were unauthorised after the fact. And it is unlikely that Mr K would not report the payments at the time, if they were really made without his consent.

There was a separate payment for about £65, which Mr K received a text about. I know that Mr K has made a number of points about this payment, as he says he responded to that text and reported it as unrecognised. But I'm afraid that payment isn't relevant. It was just a transfer Mr K made of his usual wages, to his other account. As far as I can see, it was not related to the fraud. And as far as I can see, Mr K did not report any of the actual fraudulent activity to Santander at the time, despite seeing it when using his online banking.

It's also important to note that the fraudulent funds were transferred to another account in Mr K's name. And it appears that Mr K made genuine, undisputed payments to that same account as well. So it looks like Mr K benefitted from the fraudulent funds himself. Indeed, I've got no evidence that anyone other than Mr K benefitted from them. And I've not seen any evidence that makes it seem implausible or unlikely that Mr K could have passed on the fraudulent funds or given someone else permission to make the payments on his behalf.

I appreciate why Mr K would like to see CCTV footage. But CCTV footage is only available for a short time – usually about a month or so – so it won't be available now. And even if it were, it would've only shown what the person making the transactions looked like. It would not have shown whether they had Mr K's permission to use his account or not. Because even if I accept that Mr K wasn't present at the transactions himself, it was still possible for him to have given someone else permission to make them. And I'm afraid that all the evidence I went through above points to this being a much more likely and plausible possibility than the payments being unauthorised.

In summary, Mr K received fraudulent funds, which were then passed on such that they couldn't be easily recovered, and Mr K appears to have benefitted from the fraud. I'm satisfied that Mr K's genuine card, PIN, security details, and mobile phone were used to pay the funds on. Based on the evidence, there isn't a likely or plausible way someone did this without Mr K's consent. The only likely possibility is that this happened with Mr K's consent – either by making the payments himself or giving someone else permission to make them. This is a difficult message for me to give, and I know it's a difficult message for Mr K to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

So based on everything I've seen, I think it's fair that Santander registered the appropriate marker against Mr K at CIFAS. It follows that I also think it's fair they closed his account, which they were allowed to do in situations like this.

My final decision

For the reasons I've explained, I don't uphold Mr K's complaint.

This final decision marks the end of our service's involvement in the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 October 2022.

Adam Charles
Ombudsman