

The complaint

Mr M complains Santander UK Plc registered a fraud marker at CIFAS, the national fraud database. He doesn't think it's done so fairly.

What happened

I issued my provisional decision on this complaint on 14 September 2022. I've set this out below. These were my provisional conclusions, subject to any further comment or evidence I received from either party. I said:

What happened

Mr M held an account with Santander. On 16 and 17 September 2021, he credited this account with several thousand pounds from an account he held with another bank who I shall refer to as A. Mr M then made a series of payments using these funds out of his account with Santander.

Soon afterwards, the payments into Mr M's account were identified as fraudulent – A notified Santander that it had received a report that the original source of those funds had lodged a report that they had been a victim of a fraud.

Santander placed a block on the account and conducted a review. It later told Mr M that it would be closing his account. Mr M discovered Santander had also placed a fraud marker against him with CIFAS.

Mr M contacted Santander to complain, but it didn't think it had done anything wrong. It said, it had placed the marker in line with its internal policies and regulatory obligations. Mr M referred his complaint to us. In doing so, Mr M explained that his uncle's friend had agreed to loan him money towards buying a Tesla car and he had shown Santander that the money had come from his account with A. He felt Santander should have carried out a proper investigation rather than automatically close his account and record information with CIFAS. He didn't believe he'd been treated fairly. He said the information was having a negative impact on his ability to get credit and affecting his health.

One of our adjudicators considered the complaint and upheld it. In summary, she said Mr M had shown Santander that the funds had come from his account with A – he'd provided an extract from his account. And while the report from A may have been enough to trigger suspicion it wasn't enough to show he'd been complicit in fraud. So, she recommended Santander remove the marker. She also considered the fact that Santander had also closed Mr M's account but concluded it was entitled to terminate its relationship with him under the account agreement.

Santander didn't accept the adjudicator's findings in relation to the CIFAS marker. It asked that the matter be reviewed by an ombudsman.

What I've provisionally 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.

Having done so, I'm not intending to uphold this complaint. I realise this will be a disappointment to Mr M so, I'd like to explain why.

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 M 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 a bank must first be able to show that fraudulent funds have entered Mr M's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Mr M was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account to receive an illegitimate payment. But a marker should not 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.

I've reviewed Santander's records and I'm satisfied it received a report from A that the incoming payment was from a fraud. While the adjudicator noted Mr M had provided Santander with evidence the payments came from his account with A, that's not in dispute. But the information Mr M provided Santander didn't demonstrate anything beyond that. It didn't show the original source of the funds or why they were being paid.

Mr M has explained why he paid money into his Santander account. However, I haven't seen anything contemporaneous from before he sent the funds to himself that corroborates his understanding of the arrangement (to buy a car). I note Mr M has provided screen shots of the payments originally made to him and an exchange of messages about sending money on with his uncle. But as already alluded to, this information doesn't confirm the purpose of the arrangement.

In response, Mr M has told us that he has no direct relationship with his uncle's friend and his uncle won't assist him. I've thought about what he's said but there's also the fact that Mr M didn't leave the money in his account to buy the car. Instead (and fairly quickly) he sent some of that money onto himself. This isn't consistent with what he's told us he needed the funds for.

Mr M sent £2,000 from the funds that had been identified as fraudulent to a third-party company. I shall refer to this third-party as P. Mr M says P is a shipping company and that he and his uncle needed to pay P for shipping the car. So, I've looked into this further and found that P is a company linked to his uncle. I can't see Mr M disclosed this link given the business he says he was doing with his uncle. And I don't understand why the friend

wouldn't have paid his uncle direct rather than for funds to pass through Mr M's account in this way, only for the funds to be paid to P (back to his uncle by way of his company). I think this information is highly questionable.

In coming to my conclusion, I've thought about the following relevant factors: I've had regard for the report of the fraud, what Mr M has said about what the money was to be used for, the lack of any direct and persuasive evidence that supports the arrangement, the fact that the funds weren't then used for that purpose and the payments made to himself and P. Santander should have asked further questions as per CIFAS's guidance to its members. But I'm satisfied from looking at the evidence that if in possession of this information, Santander would have still recorded the marker. And was therefore reasonably justified in loading it. So, I don't think its treated Mr M unfairly and I don't think there's a basis for asking it to remove the marker.

For completeness I'm also satisfied Santander closed Mr M's account in line with its terms and conditions. So, I find it made no mistake. The agreement makes provision for Santander to close the account where it considers its facility has been misused and I have already outlined my conclusions about this aspect above.

My provisional decision

My provisional decision is that I don't intend to uphold this complaint.

Mr M responded. In summary, he said:

- He didn't know P was a company linked to his uncle. He was shocked to learn this and had cut all ties with him.
- His Santander account was the account registered with the auction site for buying cars. And he'd made purchases using this account before. So, despite how it may seem, sending money immediately or otherwise upon receiving it could not in his view be seen as suspicious.
- If he was complicit in what had happened, it wouldn't have impacted his health the way it did.

Santander responded to say it didn't wish to add anything further.

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.

Having done so, I'm not upholding the complaint. I adopt my provisional decision in full which sets out my findings but in addition to that I make the following points.

Mr M has given detail about what he understood the funds were for. And he's referenced previous payments he made from his Santander account. But the funds in question were identified as fraudulent by a third-party bank and its key there isn't any contemporaneous evidence confirming the arrangement between him, his uncle and his uncle's friend, about what *he* understood to be the purpose of the payments.

Mr M believes he's been the victim of a scam and didn't know that in paying P for shipping he was paying his uncle. But I don't find this persuasive - there's no tangible evidence of him

contacting his uncle about what happened and his response. There's also no evidence a car was purchased yet money was paid for shipping.

I've no doubt Mr M health has suffered because of the loading and this is causing him difficulties but overall, having weighed the evidence, I don't think Santander has treated him unreasonably in recording information with CIFAS in the circumstances. It follows that I won't be asking Santander to remove the marker or reopen the account.

I'm sorry to disappoint Mr M but this brings to an end our service's review of this complaint.

My final decision

My final decision is that I do not 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 15 November 2022.

Sarita Taylor
Ombudsman