

Complaint

Mr J is unhappy that Santander UK Plc (“Santander”) recorded a fraud prevention marker against him.

Background

In December 2019, Mr J’s Santander account received a transfer of £2,354.97 from a third party. A cheque for £8,000.00 was also paid into Mr J’s account too. Shortly afterwards, Santander received a notification from the bank which sent the payment stating that the payer of the funds from the transfer had reported being a victim of fraud. The cheque was also reported as being fraudulent too.

As a result of this, Santander reviewed Mr J’s account, decided to close it and also record a fraud prevention marker against Mr J. Upon subsequently learning of the fraud marker, Mr J complained. Santander looked at Mr J’s complaint and didn’t uphold it. As Mr J remained dissatisfied he referred the matter to our service.

One of our adjudicators looked into Mr J’s concerns. She didn’t think that Santander had done anything wrong or treated Mr J unfairly and so didn’t recommend the complaint be upheld. Mr J 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 J 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.”*

What this means in practice is that Santander must first be able to show that fraudulent funds entered Mr J’s account, whether they were retained or merely passed through. Secondly, Santander also needs to have strong evidence to show that Mr J was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment.

This could include Mr J 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 J's complaint, I need to decide whether I think Santander had enough evidence to show fraudulent funds entered Mr J'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.

Mr J has told us that his school mentor asked him to provide his bank details as he could help him make some money. Mr J said that he later got a notification, on his online banking, of an attempt to pay a cheque into his account. He says he contacted Santander immediately to let it know that he didn't know the person who the cheque was from. Mr J also says that he subsequently reported his mentor to his school.

I've thought about what Mr J has said. But I'm afraid Mr J's version of events not being supported by the available evidence makes it difficult to place much weight on what he is saying. Mr J says that he contacted Santander about this matter. However, Santander has provided a recording of a call it had with Mr J at the time.

I appreciate that Mr J says that he didn't speak to anyone from Santander. But the call from Santander was made to his phone number and the voice of the person on the recording is very similar to Mr J's. Given this is the case, notwithstanding his assertions on this matter, I'm satisfied that it is more likely than not that it was Mr J who Santander spoke to.

During this call Mr J confirmed that the £2,354.97 transferred into his account was from his aunty. And she'd transferred the money to him so that he could go on holiday. Furthermore, while Mr J did say that he didn't attempt to pay the cheque into his account, he said one of his school friends must have attempted to do this as a joke. At this stage there was no mention of a school mentor.

When told by the representative that the person paying the cheque into his account used his card and personal identification number ("PIN"), Mr J said that a friend had taken his card for three days. Nonetheless, this still wouldn't explain how someone else would have had Mr J's PIN in order to have paid in the cheque into Mr J's account. So it's difficult for me to accept that this deposit was attempted without Mr J's knowledge or cooperation.

I realise that Mr J has more recently reported his mentor's conduct to his school. He says this in itself should be seen as evidence of him not having been involved in the fraudulent activity. I accept that it's likely someone else – possibly Mr J's mentor as he says – arranged for the activity in question to take place. However, I'm not considering who came up with the idea of paying in fraudulent funds into Mr J's account, or even whether Mr J instigated this course of action.

What I'm considering here is whether the activity on Mr J's account took place with his knowledge and consent and whether he knew some kind of illegitimate activity was taking place. And having considered matters, I'm afraid that the sheer number of inconsistencies here, means that I can't reasonably say that Mr J wasn't complicit in the fraudulent activity which took place on his account. In my view, the available evidence demonstrates that it's more likely than not that Mr J took steps to at least gain access to funds he knew he wasn't entitled to, in the form of fraudulent funds that had been paid into his account.

So overall and having considered everything, I'm satisfied that Santander did have sufficient evidence to show that fraudulent funds entered Mr J's account. And it was also reasonably entitled to conclude that it was more likely than not Mr J was complicit in this. As this is the case, I don't think that it was unfair for Santander to record a fraud prevention marker in the circumstances that it did.

I appreciate this will be very disappointing for Mr J – especially in light of the ongoing impact he's said the fraud marker is having on him. 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, Mr J 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 J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 June 2023.

Jeshen Narayanan
Ombudsman