

The complaint

Miss O complains that Santander UK Plc closed her account and registered information with CIFAS, the UK's fraud database.

What happened

Ms O had an account with Santander. In April 2021 she received a payment of £8,685 from a third party, who I'll call B. But Santander says that some of these funds were connected to fraud, and so it closed Ms O's account and withheld access to the funds. It also registered information about what had happened with CIFAS. Dissatisfied, Ms O complained to Santander and then referred the complaint to us.

Our investigator looked at the complaint but didn't think it should be upheld. Ms O didn't agree. The complaint has been referred to me.

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 this decision, I need to decide whether Santander acted fairly in closing the account, withholding the funds, and reporting information to CIFAS.

I've first considered Santander's decision to restrict and close the account. The terms and conditions that applied to Ms O's account allowed Santander to close this account immediately in certain circumstances. That would include where Ms O acted dishonestly or acted in any way to give rise to a reasonable suspicion of fraud.

Here, Santander received a report that some funds paid into Ms O's account were the result of fraud. I note that Santander contacted Ms O to ask her about these funds, and Ms O said her friend, B, had received them from Ms O's parents. But these funds weren't from her parents – they were paid to B by an apparently unconnected third party. Given the report Santander had received and that Ms O's explanation was at odds with what appeared to have happened, I accept that Santander was acting in line with the applicable terms and conditions when it restricted and then closed Ms O's account.

Santander then decided to withhold access to the remaining funds. I'd only expect Santander to do this if it wasn't satisfied that Ms O was entitled to the funds.

We've asked Ms O about this. She says that the funds actually related to a foreign exchange transaction that she'd arranged with the help of a third party, who I'll call C. She says she arranged to pay foreign currency to a business based overseas. In return, C arranged for someone to make a payment to B's account in the UK.

Ms O says the reason she asked for the payment to go to B's account was because she'd recently lost the cards for her own bank accounts. So she temporarily used B's account in case anyone else found her cards and tried to make unauthorised payments. For similar

reasons, she'd also transferred the balance of one of her other accounts with another bank to B, which B had then transferred to her account with Santander, together with the other funds.

To support her version of events, Ms O has provided screenshots of messages on an instant messaging app between herself and C. According to these screenshots, when Ms O wanted money, she'd tell C how much she wanted to change, and C would send her bank details to make payments to. Once Ms O had made the payment, C would arrange for a third party to make the payment to her or B's accounts in the UK.

But while I appreciate this will come as a disappointment to Ms O, I can't say Santander acted unfairly here. Based on what Ms O was saying, she has received large sums into her account from people she has no connection to. And then Santander received a report that one of the payments was the result of fraud. In the circumstances, I can understand why Santander hasn't found the information Ms O has provided satisfactory and why it required further information before it can release the funds to Ms O.

Finally, I've considered Santander's decision to register information with CIFAS.

The marker Santander has filed with CIFAS records that there's a "misuse of facility" – relating to using the account to receive fraudulent funds. To file this information, it isn't required to prove beyond reasonable doubt that Ms O is guilty of fraud or a financial crime, but they must show that there are grounds for more than mere suspicion or concern. There needs to 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 record the conduct of the subject to the police.

Here, fraudulent funds were moved into Ms O's account – Santander received a report from a third party that these funds were fraudulent, and nothing I've seen suggests this report was mistaken.

I'd also expect Santander to have strong evidence to show that Ms O was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment.

I've carefully considered this. I note that when questioned by Santander Ms O said the payments were from her parents. She didn't mention the arrangement with C or that the funds might have been paid by a third party. I note that B apparently gave Santander a completely different explanation of where the money had come from. And then Ms O gave a further explanation when she referred the complaint to this service. Given the inconsistencies in what Ms O has told us and the business, it's difficult to place much weight on what Ms O has said. It also remains unclear what connection there was between Ms O and C on the one hand, and the third party who sent B the funds on the other. I've also considered Ms O's actions in transferring these funds away from and then back to her accounts.

Having weighed everything up, I'm persuaded Santander acted fairly and reasonably in applying the marker with CIFAS against Ms O. For the reasons I've explained, I'm satisfied that Santander had grounds to believe that Ms O was involved in the dispersal of fraudulently obtained funds based on the evidence it had. I find it more likely than not that Ms O knew rather more about the account activity than she's told us and the bank. So I think it was fair for Santander to register the CIFAS marker.

It follows that I don't uphold the complaint and I'm not going to tell Santander to do anything further to put things right.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 1 May 2023.

Rebecca Hardman
Ombudsman