

The complaint

Mr D complains that Santander UK Plc added a marker at CIFAS, the national fraud database, when it closed his account.

What happened

Mr D says that the marker is affecting his ability to open a bank account elsewhere and he knows nothing about any fraudulent money paid into his account.

Santander said it received a report that a payment of £50 into Mr D's account in February 2020 had been fraudulently obtained. It was quickly withdrawn. It asked Mr D to show proof of entitlement to the money and he didn't do so. Santander said that it closed the account and added the marker.

Our investigator didn't recommend that the complaint be upheld. There were grounds to add the marker and close the account. The amount involved wasn't relevant and Mr D couldn't show he was entitled to the money.

Mr D didn't agree and wanted his case to be reviewed. He was 17 at the time and now doesn't recall anything. He wasn't aware of any fraudulent money and didn't know £50 had been paid in fraudulently. He has been turned down when applying for other accounts and he needs access to a bank account.

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.

I need to consider whether the report to CIFAS was made fairly. On this point, Santander needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer 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 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 deliberate complicity.

To meet the standard of proof required to register a CIFAS 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 can see from Santander's records that it noted that it had spoken with Mr D about this money in March 2020. And that he'd indicated that this was from a friend, he'd provided the first name of. He was asked to provide proof of entitlement and also told that the money hadn't come from a person with that name. Mr D didn't provide any evidence and the account was closed.

I've noted what he's told this service now and that he didn't know that this money was fraudulent. I've looked at his bank statement and can see that this money was withdrawn in cash the day it was sent. And Mr D hasn't provided any explanation of how anyone other than him could have accessed his account in this way without his authority. So, having considered all the evidence I find it most likely that he was complicit in what happened.

Santander says that it applied the CIFAS marker because Mr D received fraudulent funds into his account. So, I've looked at whether Santander was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Santander needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr D's account of events and what he has provided, I'm satisfied that Santander had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr D received fraudulent funds into his account and didn't report this to Santander at the time.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Santander had grounds to believe that Mr D had used fraudulently obtained funds based on the evidence it had.

Given my findings I don't think Santander made a mistake in closing his account. And I don't have a reasonable basis to require it to do anything further. I know that this will be very disappointing for Mr D given what he says about the impact the marker is having for him.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 February 2023.

Michael Crewe
Ombudsman