

The complaint

Mr B complains Santander UK Plc added his details to a fraud database.

What happened

Mr B's account received two fraudulent payments. Santander blocked Mr B's account and asked him to explain where the money came from. Mr B explained the money was for a car purchase. In a later call, Mr B said he didn't recognise the payments.

Santander closed Mr B's account and added his details to a fraud database.

Mr B complained and Santander said it wouldn't remove Mr B's details. Santander said Mr B had received fraudulent money and had been asked to provide documents to support the sale of a car, but hadn't provided anything.

Unhappy with this answer, Mr B brought his complaint to this service. An adjudicator looked into things and thought Mr B's complaint should be upheld.

The investigator said Mr B's testimony around the sale of the car was persuasive, and suggested Mr B had been the unwitting beneficiary of fraudulent money. Because of this, the fraud database listing was unfair, and the investigator thought Santander should remove it.

Santander disagreed and said Mr B had accessed the fraudulent money very quickly after it had been credited. Santander also questioned why there were no documents about the sale of the car.

And Santander didn't agree the statements from a relative supported Mr B's testimony. Santander said Mr B benefitted from the money, so the fraud database loading was fair.

Santander asked for an ombudsman to decide things.

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.

For Santander to fairly load Mr B to a fraud database, or keep a loading on, it needs to show Mr B received fraudulent money. Santander also needs to show Mr B was somehow complicit in the receipt of this fraudulent money.

I've looked at the information Santander received from the sending bank, about the payment to Mr B's account. I'm satisfied the money was fraudulent.

I have to decide if Mr B was somehow complicit in receiving, and using, this fraudulent money. The investigator asked Mr B for his version of events.

Mr B said he was looking to sell his mother's car, and placed an advert on social media. Someone came to look at the car and a price was agreed. Mr B received the first part of the agreed payment and took some cash out and sent the rest to another of his accounts.

The next day the buyer arrived again and decided not to buy the car. Mr B had already received more money, and the now potential buyer asked for all the money back.

Mr B didn't have all the money, so he borrowed some from a relative and then, after a suggestion from the potential buyer, bought foreign currency using his card and handed this to the potential buyer. This meant the potential buyer was refunded in full.

Santander then blocked and closed Mr B's account.

I've considered what Mr B has said, and Santander's concerns about what Mr B says happened. Where evidence is unclear or incomplete, I can decide things on a balance of probabilities – what's more likely to have happened.

In Santander's first call to Mr B he said the money was from the sale of a vehicle. I realise Mr B was inconsistent in his later calls, but I don't think this matters. If the money wasn't for a car sale, it would mean Mr B would need to manufacture a story to fit a car sale.

I don't believe this is the case, when considering what Mr B and his mother have said about the circumstances of the car sale and subsequent refund.

Mr B said the potential buyer reacted badly when the car wouldn't start on the second viewing. Mr B says it's likely the potential buyer purposely made the car fail to start.

The potential buyer was then very angry and abusive and Mr B's mother stepped in and offered a refund to diffuse the situation. Mr B's mother has sent in her version of events, and it's consistent with Mr B's.

I've also seen documents to show Mr B's mother owned the make and model of car he says he was looking to sell. Mr B doesn't have proof of the listing, or any messages from the potential buyer.

Mr B says the potential buyer blocked him, and he lost the messages, and this is consistent with how I understand this type of social media works. I don't think the lack of messages proves or disproves Mr B's version of events.

Mr B says a relative had access to cash to refund, in part, the potential buyer. Santander has seen the statements and has said this doesn't help Mr B's version of events, but I disagree.

Mr B's relative was consistently taking £300 a day for a week before the attempted sale of the car. This would mean Mr B's relative would have to know, in advance of Mr B receiving fraudulent money, they'd need to access cash to act as a cover for his version of events.

I don't think this is very likely. I'm persuaded Mr B's relative had access to cash at home to allow him to refund, in part, the potential buyer. And I'm persuaded this is usual behaviour from Mr B's relative, not something done in advance to prove a later version of events.

Santander has also questioned why there are no documents to show the sale. But Mr B and his mother have both said the sale of the car didn't go ahead.

Santander says it expected the documents to change hands after the first payment. The first payment was for half the price of the car, I wouldn't expect Mr B's mother to change ownership of the car to a buyer who hadn't paid in full.

The last point Santander raised is the rapid spend, including the purchase of currency. Mr B says the potential buyer suggested this as a way to access the cash.

Mr B also says he and his mother suggested a bank transfer, but the potential buyer refused this. If the potential buyer allowed the money to be repaid to the sender, they wouldn't be able to access this fraudulent money.

The potential buyer needed a way of accessing money from Mr B's account without a bank visit, where difficult questions might be asked. Withdrawing currency was a way round this, so it seems to fit with the potential buyer being the fraudster.

I can't be sure what happened around the car sale, I wasn't there. But Mr B and his mother were, and I've seen testimony from both, and I'm inclined to believe this testimony.

On balance, I think it's more likely Mr B wasn't aware the money coming into his account was fraudulent. This means, on balance, I don't think Mr B was complicit in the receipt, or use, of this fraudulent money.

The bar for a fraud database loading is higher than just balance of probabilities. Because of this I don't think it's fair for Santander to continue to record Mr B's details on any fraud database.

My final decision

My final decision is I uphold this complaint and Santander should remove Mr B's details from any fraud databases it's recorded them on.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 June 2023.

Chris Russ
Ombudsman