

## **The complaint**

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

## **What happened**

Santander said it had received a report that payments into Mr M's accounts totalling £1,810 in May 2019 had been reported as fraudulent. It had asked Mr M to show he was entitled to those funds at the time, and he hadn't done so. Santander said that it closed his account and had grounds to add the CIFAS marker.

Our adjudicator didn't recommend that the complaint be upheld. She said that there was a high bar for a CIFAS marker to be registered. Mr M had explained to her that this money was from a prospective business partner and someone he knew. And Mr M had been sent the money for goods which he could arrange with a discount. The money had been quickly withdrawn in cash or sent to someone else, and she couldn't see how this was linked to the purchase of goods. Mr M had provided Santander with a printout of the account that the money came from although this didn't show the account holder. But it seemed that account holder was a limited company (anonymised here as 'B'). She said that this was different to the name of the business partner and couldn't understand why Mr M hadn't questioned this at the time. So, she didn't think that Santander had acted unfairly in closing the account and adding the marker.

Mr M didn't agree and wanted his complaint to be reviewed. He said that when he spoke to our adjudicator he couldn't remember the name 'B' but this didn't make a difference. The money had been paid into his savings account at Santander and the person sending the money had notified him of this. He'd met this person at the gym, and they'd talked for a couple of years about going into business together. Mr M said his own business was small at the time and that he didn't even have a business account, and this is why the funds were paid into his personal account. It was a tiny investment and he'd no idea where the money had come from and that he needed to remember the name of the sender four years later especially after he'd appealed to Santander and lost hope. He wanted his complaint to be reviewed impartially.

## **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.

Through our adjudicator I'd asked for some more information from Mr M. He'd said he had receipts relating to the purchase of goods at the time and provided them. I was unclear why he didn't have a bank account for his limited company especially as there seemed to be transactions with that company shown on his personal account. Mr M said he didn't have a 'proper' bank account for the company but instead those operated with a prepaid card and would save on fees if he used his personal account. He went on to say that he'd known the

person sending the money for a while and they'd both lent each other money. The agreement between them was 'fluid' and they didn't feel the need for any contract, and it wasn't as if thousands of pounds were involved. Mr M was concerned that we'd side with Santander and that this further information will have no impact.

I'm thinking about what is *most likely* and am carrying out a fresh assessment of the case. I note that Mr M was clearly asked for information in 2019 and had the full opportunity to provide that then. And that's he's been pursuing this further with Santander since 2021. So, I don't think he's been disadvantaged by being asked for effectively the same information now as I'd expect there to be a consistent version of events.

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.

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've taken into account guidance from CIFAS about cases where someone receives fraudulent payments into their account like this – acting as a so called 'money mule'. And that relevant factors in deciding whether Mr M was deliberately complicit in what happened include whether he knew or ought to have known that the money wasn't legitimate, whether he may have benefitted from the money by keeping part and whether he has provided generic or inconsistent explanations.

I've listened to the call Mr M had with our adjudicator. During that it was pointed out to him that according to his statement he'd received and made payments before involving B. This time there were five payments credited from B as follows £290 on 2 May; £400 on 4 May; £500 on 8 May; £450 on 10 May; £50 on 11 May and £120 on 14 May 2019. As has been said this money was either withdrawn or quickly transferred on.

Mr M has provided a number of receipts. Some don't relate to the relevant period. Although they do show Mr M to be trading and buying goods into 2022. There are invoices of £450 for 6 May, £1,056 for 13 May and £576 for 24 May 2019. I don't doubt that Mr M was operating in this line of business especially as I can see the record of any of his directorships from publicly available information at Companies House.

Mr M says he wouldn't be expected to check that money received for goods was legitimate and that he accepted this in good faith. I understand his point but here this money was reported as resulting from fraudulent activity. So, he reasonably needed to show then that he was entitled to receive and then spend this.

I've seen the notes relating to what he told Santander in 2019. And that this money was from an associate's company and that he'd loaned this person money too in the past. It

was noted he'd then provided a receipt for £306 and another for £258 relating to a specific supplier's name. He now says in his most recent responses that that this supplier company had a trading name linked to the invoices he's sent to us. And Mr M then had no evidence about the loan that had been a year earlier. He'd provided a business card of the business he'd had the purchases from.

The reason I asked about his company bank account is that Mr M would need to keep records of trading for his financial statements. And it was unclear why he'd first said he hadn't a company bank account and now that he wasn't always using it. There is simply no record to support these dealings with B, or any individual. I'm finding it difficult to accept that Mr M didn't know that the money was coming from a limited company. And that he wouldn't need his own records for the transactions with B or any individual. I can't see he's shown any personal connection between the individual he says he was dealing with or between that person and the limited company that was sending him money. There also seems to be different information now about which invoices were relevant and no clear link between those, the multiple credits and anything specific he'd supplied. As I indicated earlier Mr M did have the opportunity to clarify all that at the time with Santander and potentially ask the person/ company sending him money to assist him. The bank statement doesn't really help here as it doesn't show his entitlement to the money. In sum even though Mr M says he was operating a relatively small business I'd expect there to be more information and especially as he was asked for this in 2019.

On balance and for the reasons I've given I don't find his testimony to be reliable. I conclude that the test for a CIFAS marker was met as Mr M hasn't shown he was entitled to receive and spend the money that had been reported as fraudulent. I also consider Santander was able to make a commercial decision to close his account under its terms and conditions.

I can appreciate that Mr M will be disappointed by my conclusions given what he says has been the impact of the marker 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 M to accept or reject my decision before 25 April 2023.

Michael Crewe  
**Ombudsman**