

The complaint

Miss O has complained that Santander UK Plc registered a marker against her at CIFAS, the national fraud database.

What happened

Miss O had a current account with Santander. In July 2020, she opened a savings account too. In August 2020, Miss O's savings account received around £900 from a victim of fraud, which was then transferred to her current account and into a cryptocurrency account of hers.

Miss O told Santander the funds were from a friend of a friend for cryptocurrency, she'd made the onward payments herself, and no one else had access to her account. She said she'd provide proof she was entitled to the money, but later said the friend had blocked her.

Santander closed Miss O's accounts and registered a marker against her at CIFAS. They contacted the cryptocurrency platform to try to recover the funds, but the platform said the funds had since been spent.

In 2022, Miss O came to our service. She explained that what she'd told Santander was a lie her boyfriend had told her to tell. He was helping to support her, and he regularly sent her money. She was having some financial difficulties, and he'd asked for control of her account so he could help her clear her overdraft. She gave him her login details and let him use her account for one day. She didn't know what he was doing, nor that he was committing fraud. She trusted him and thought it was OK to give him access. She'd since split up with him. She didn't realise the seriousness of the incident until she discovered the CIFAS marker.

Miss O confirmed the cryptocurrency account was hers, but she'd lost her details and couldn't access that account anymore. So she'd lost the money and couldn't evidence what she'd done with it. She also couldn't provide evidence of any contact with the ex-partner about this.

Our adjudicator looked into things independently and didn't uphold the complaint. Miss O appealed, so the complaint's been passed to me to decide.

I sent Miss O and Santander a provisional decision on 14 February 2023, to explain why I didn't think the complaint should be upheld. In that decision, I said:

In order to register this marker, Santander were not required to prove beyond all reasonable doubt that Miss O had done something wrong. They did need to have reasonable grounds to believe that she'd misused her account, which went beyond a suspicion or concern, and which had appropriate supporting evidence. Having carefully considered everything that both sides have said and provided, I currently think Santander did have sufficient grounds to register this marker. I'll explain why.

Santander received an official fraud report showing that the money Miss O received was taken from the victim of fraud. And it's confirmed that she kept the money in her own cryptocurrency account, aside from some which was used to clear her overdraft.

This is important, as I'm not persuaded it'd make sense for a fraudster to organise a highly complex crime, harm the victim, and risk significant prison time, just to give it away to help someone with their money troubles. Not least since as soon as the fraud was inevitably found out, the recipient's account would get blocked anyway and they'd be in trouble. So the fraudster would be taking large and unnecessary risks, with no real benefit to themselves, and with little overall benefit to the person they're supposed to be helping.

On the other hand, it's a common practice for fraudsters to use "money mules". That's where they send someone the proceeds of fraud, and use their account to forward the money on so it can't be recovered – often involving the use of cryptocurrency. I'm afraid that possibility fits very well with what happened here.

From what Miss O's told us, she gave her login details and access to her tablet device to her ex-partner. But the onward payments also used one-time passcodes that were sent to Miss O's mobile, at the same number she still uses now. She would have needed to give these passcodes to her partner to help him move the fraudulent funds. While this is a more minor point, this suggests Miss O was at least partially involved in sending on the funds, as opposed to being unaware of how her account was being used.

More importantly, it's Miss O who profited from the fraud. The fraudulent funds were used to clear her overdraft, then sent on to her own cryptocurrency account. She's confirmed this was her cryptocurrency account, and I can see she was making payments to it with her own money before this. Indeed, it looks like Miss O was the only person who profited from the fraud – the money was paid either to her overdraft debt or her cryptocurrency account. And it doesn't seem likely or plausible that Miss O was an unwitting participant in the fraud if she was the sole – or at least the main – beneficiary of it.

We asked for evidence of what the boyfriend had discussed with Miss O. But Miss O said she had none at all – she'd only spoken to her ex in person or on the phone. I'm afraid I don't find that to be plausible. Miss O told us they were in a relationship and he was supporting her, so I'd expect them to have had a very substantial message history. And since this ex apparently caused Miss O to be put on the fraud database and have her accounts closed, I'd expect her to have at least some messages with him about it. Miss O did forward some messages with an unregistered number, where she complained her ex had got her accounts closed. But I'm afraid this doesn't show that she was unwitting or what the ex told her. Really, we have nothing which substantiates what Miss O says the ex told her – even though if they were in a relationship there would have been a long message history.

Miss O says she also can't show us what she did with the fraudulent funds next, as she left them in the cryptocurrency account and then lost access. But I'm afraid I don't find this to be plausible either. The platform has a robust account recovery process even if one forgets one's details. And even if Miss O did still have problems getting access, I'd think she would have contacted the company urgently to sort that out, rather than leaving hundreds of pounds in there for well over two years while she was in financial difficulties.

Indeed, while Miss O says she left the money in her cryptocurrency account, the platform found they couldn't recover the fraudulent funds as no funds remained. So contrary to what Miss O has told us, it seems she did in fact spend or otherwise move on the money. I'm afraid this substantially undermines her latest testimony.

There are other points where Miss O's testimony has been inconsistent, too. For example, she said her boyfriend regularly sent her payments. But looking at her historic statements, I can't see any instances of him sending her money, let alone regularly. And Miss O has already admitted that the things she repeatedly told Santander were in fact fabricated. I'm afraid that it does make it very difficult for me to rely on her testimony.

It's also worth noting that Miss O opened her savings account some time before the fraud, but never used it for anything else. Essentially, she opened it, never paid any savings into it, then it received and passed on fraudulent funds. This would be unusual for an account opened for genuine use – but it does fit very well with how being a money mule works.

Lastly, I've not seen any evidence that makes it seem implausible or unlikely that Miss O could've knowingly and willingly helped to receive and pass on the fraudulent funds.

In summary, Miss O received fraudulent funds and her account was used to pass them on. The onward payments needed passcodes Miss O was personally sent. Miss O was the main person who benefitted from the fraud, and it wouldn't make sense for someone else to do this without her consent just to help her out. Miss O has accepted her previous testimony was false. Her latest testimony is also inconsistent or implausible at points, and she's been unable to evidence what she's told us even when she should be able to. Her actions don't fit well with her being an unwitting participant, but do fit well with the actions of a money mule.

So based on everything I've seen so far, I think it's fair that Santander closed Miss O's accounts and registered a marker at CIFAS. This is a difficult message for me to give, and I know it's a difficult message for Miss O to receive. But given the evidence I have, and the balance of probabilities, I'm currently unable to reasonably reach any other conclusion.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 28 February 2023. Santander didn't add anything further. Miss O got back to us, and I'll talk through her submissions below.

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 doing so, I've considered everything that Miss O sent us in response to the provisional decision – though I'll focus on what I found to be the key points.

Miss O said that she really had lost access to her cryptocurrency account. She provided some emails. In one email, from 9 August 2020, Miss O asked the platform about accessing a particular wallet. But even if she was having some trouble back then, I can see she regained access to the account after that, as it's the account she received the fraudulent funds into on 20 August 2020. And the other email she provided also confirms she was using the account on 20 August 2020, as she made a withdrawal then. The third email does not appear to be relevant. Miss O sent an extract from a transaction history, but this only shows what happened before the fraud, and doesn't show what happened during the period of the fraud or afterwards.

Miss O also sent us a video showing a temporary text and voice note from her ex-boyfriend. But I'm afraid they don't substantiate what she's told us. Essentially, the ex just said Miss O knew what she was doing, he couldn't give her what she was asking for, and she should just "forget about it". It's not clear what this is referring to – I'm not sure it even relates to this incident. And even if I assume it did, it does not show or reasonably imply that Miss O was an unwitting participant in the fraud.

Miss O explained that she only spoke to her ex on Snapchat or in person, so she couldn't provide any other messages. I do understand that people often use apps which auto-delete messages. But people normally talk using other messaging systems as well – for example, Miss O also confirmed she uses WhatsApp. I'm afraid I simply don't find it credible that Miss O would have absolutely no message history with someone who she was in a relationship with and who was supporting her, and no emails, texts, social media messages and so on discussing what was a very important incident for her. I should also point out that Miss O was previously clear that she only spoke to her ex over phone calls or in person – not by Snapchat. So her testimony has been inconsistent again.

Miss O explained that her testimony has been inconsistent because she couldn't remember things. But while I can certainly sympathise with that to some degree, I don't think this level of inconsistency can be explained by memory fading over time. For example, as I mentioned before, Miss O told us her ex-boyfriend regularly sent her payments. But he doesn't seem to have sent her any payments at all.

Miss O explained she opened the savings account to be smarter with money. But the fact remains that she never used it for anything like that. She opened it, never paid any savings into it, then it was used to receive and pass on fraudulent funds. That's not usual for a genuine account, but fits well with the possibility that she was involved in the fraud.

Miss O accepted she'd been negligent, but reiterated she was an unwitting participant in the fraud. And again, I have thought very carefully about that possibility. But I'm afraid it remains the case that:

- Miss O was the main – and seemingly only – person who benefitted from the fraud
- It's not plausible that someone else would carry all this out just to benefit Miss O without her knowledge or consent
- Miss O appears to have been at least partly involved in sending on the fraudulent funds
- The account used to receive the fraudulent funds was not used for anything else, and was opened in advance by Miss O
- Miss O's testimony has been inconsistent and implausible
- Miss O has not provided any substantial evidence to back up her testimony, even when such evidence should be available to her

- The circumstances of the incident do not fit well with Miss O's testimony, but do fit well with the possibility that she was either willingly taking part in the fraud itself or willingly acting as a money mule
- I've not found any evidence that makes it seem implausible or unlikely that Miss O could've knowingly and willingly helped to receive and pass on the fraudulent funds

So taking everything into account, I've still found that it was fair Santander registered this CIFAS marker. I know this will come as a serious disappointment for Miss O, though it is not my intention to disappoint her. But based on the evidence and circumstances of the case, I'm unable to reasonably reach any other decision.

Miss O made some comments about the other people involved in the fraud, such as her ex. I understand she feels they should face consequences more than her, and I do appreciate her point of view. I should explain that in this decision, I can only consider the dispute between Miss O and Santander, about whether they should have registered this marker against her or not. I can't consider what should or shouldn't happen to anyone else. It may well be the case that other people should have CIFAS markers or face other repercussions. But in this decision, I can only consider Miss O's marker in particular. And I've found that marker to be fair.

Lastly, Miss O explained that the marker was having a large impact on her. And I'm sorry to hear about the difficulties she's facing. But since I've found that Santander registered the marker fairly, I can't reasonably tell them to remove it. The marker lasts for six years, so it won't be forever, and after that period it will go away. If Miss O does not take part in any other incidents like this again, then she shouldn't face any such markers again.

My final decision

For the reasons I've explained, I don't uphold this complaint.

This final decision marks the end of our service's involvement in the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 29 March 2023.

Adam Charles
Ombudsman