

The complaint

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

What happened

Santander said that it decided to withdraw Mr O's banking facilities in August 2021 following a review of his account. After his account had been closed a credit transaction for £5,000 on 1 May 2021 was reported as fraudulent in November 2021. It said it tried to contact Mr O by letter about this but didn't hear anything and the marker was registered. When he later contacted it in July 2022 it asked him to provide evidence to support his entitlement to the funds. It wasn't satisfied with this and said that the *"only information that could result in the removal of the information uploaded to 'CIFAS' would be an explanation why the funds were transferred to a third party account when received in May 2021, a copy of any communication you had with the sender of the funds showing the reason for the transfer and any agreed actions you both were to take, or if this is not possible to provide, the withdrawal of the concerns by the sender of the funds and their bank."*

Our adjudicator didn't recommend that the complaint be upheld. Mr O had explained that the payment was made for his sale of crypto currency. She said that the information Mr O had supplied didn't clarify where and why the funds entered his account. And that these were for the purpose of a trade. She thought he was more likely than not complicit in what happened and that there were grounds to add the marker. Santander had closed the account in line with the terms and conditions.

Mr O didn't agree and wanted his complaint to be reviewed. He said that the single purpose of his complaint was about the CIFAS marker and not the closure of his account. But he wanted to stress that his account wasn't closed as a result of fraudulent activity as our adjudicator had implied. Having noted the criteria for a CIFAS marker he wanted to know why Santander wasn't prepared to report this to the police and so that the person who bought the crypto currency would be identified and also that there was an account that received this. Mr O said that he never disputed receiving the money and that he moved money to buy further currency to realise a profit.

My provisional decision

I issued a provisional decision on 1 March 2023. I set out below what I said.

I needed 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 took into account guidance from CIFAS about cases where someone receives fraudulently reported payments into their account like this – acting as a so called 'money mule'. And that relevant factors in deciding whether Mr O 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 noted that the closure of Mr O's account was unrelated to this payment. And that he didn't want me to make a finding beyond that.

His account had in any event been closed in September 2021 and so before this payment had been reported. It was reported six months after Mr O had received it.

I was satisfied from all the information Mr O has provided to this service that he had a legitimate account with the crypto currency company and had carried out a number of transactions both before and after this one. He has provided evidence of an online chat with that company about getting details of records of transactions after more than six months. It has confirmed in writing that he had released an amount of crypto currency worth £5,000 to a buyer. The name of that buyer is the same as that referred to on his bank statement. This was a 'peer to peer' payment and so money was sent directly to Mr O's account. He clearly hadn't now been able to obtain his online chat with that buyer in advance of the sale. And I didn't think that's unreasonable given the time that has passed and as I was unclear from the evidence that he was contacted again by Santander in November 2021 after his account had been closed.

I said I didn't have a role here in looking into exactly where that money did come from. The person sending it had clearly reported this as a fraudulent payment but notably six months later. And I also couldn't disclose any information beyond this that Santander relies on but which I'd reviewed.

I said I wasn't satisfied on the evidence that Mr O was a witting participant in any fraudulent activity. I was satisfied he most likely supplied crypto currency in good faith. And that he could reasonably rely on the crypto currency company having carried out checks on the person he thought he was dealing with. I noted his testimony and his evidence that he reported this matter to the authorities too and found his account of what happened to be plausible and reliable.

While the report that the payment he received was fraudulent is clearly grounds for suspicion I didn't consider that the high bar for a CIFAS marker has been reached. Mr O was entitled to move the money on, and he says he bought further crypto currency. He continued to use his account in a seemingly similar way after that until it was closed by Santander. Mr O wants the marker to be removed as a resolution to his complaint and my provisional finding was that this is appropriate here.

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.

Santander said that it would agree to remove the marker but that its decision not to offer Mr O an account stood. It said that this service appeared to have seen information that it hadn't. And it accepted there was a possibility that Mr O was the innocent recipient of fraudulent funds.

Mr O said that he was satisfied with my provisional decision.

As I set out in my provisional decision I was unclear whether Santander had asked Mr O for further information about this payment when reported and after his account had been closed. In any event as I explained I had seen information that persuaded me that he hadn't been a witting participant in the receipt of fraudulent funds.

So, I see no reason to depart from my provisional decision for the reasons I've already given.

My final decision

My decision is that I uphold this complaint and I require Santander UK Plc to remove this CIFAS marker relating to Mr O.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 21 April 2023.

Michael Crewe
Ombudsman