

The complaint

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

What happened

Santander said that it received a report that a credit for £1,600 paid into Mr A's account on 7 January 2020 had been obtained fraudulently. The money had been withdrawn. It had considered Mr A's explanation at the time but decided it had grounds to close his account and register the marker.

Our adjudicator didn't recommend that the complaint be upheld. Mr A had told her he'd lost his card at around this time and didn't have knowledge about the money. But there was only one device set up to access mobile banking and which used biometric identification. This was accessed at the time the funds had been received. And the majority of the money was taken out in a branch using the card and PIN. She thought that Mr A was complicit in what happened. And so, Lloyds had acted reasonably when it added the marker and closed Mr A's account.

Mr A didn't agree and wanted his complaint to be reviewed. He said that anyone could have hacked his account. And he had written confirmation that he was away at university at the time and so couldn't have been in the relevant branch. He'd lost his bank card in November 2019 and been told to change his address to that at his university. Mr A said he hadn't told our adjudicator that he'd lost his card at the time the funds had been received. He'd downloaded the app to his phone at the end of 2019. But he'd not been able to use it and had contacted branch staff about this. He now thinks that this is because someone else was using it. In January 2020 he tried to pay for something with his card and this was declined. And he was then told his account had been closed. He had been in touch with police and believes that the key CCTV evidence hadn't been kept and which would show that the person who went to withdraw funds wasn't him

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 take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated, say with a card and PIN. And if they weren't authorised Mr A wouldn't generally be responsible for them.

I also 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. The evidence must be clear, relevant and rigorous.

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 think that some confusion may have arisen about the timeline of what happened here, and I've noted the information that Santander has provided including audits of transactions and of log ins to Mr A's account online.

It records he reported a card lost in November 2019. This was replaced and he collected this from a branch near to his university. He was also sent a PIN. He used this card to make payments and also paid a credit of £230 into his account on 31 December 2019. The records show the chip on his card was read and his PIN entered to do so.

The fraudulent payment of £1,600 was received on 7 January 2020. A withdrawal was made the following day in a branch for £1,480 and one at a cash machine for £300 at the same location and time. After that there was about £40 left in the account which was used for smaller card payments.

On 8 January 2020 Santander received a call from someone who said he was Mr A but couldn't pass security. I've listened to the call recording. That person wanted to block the account and was vague about whether the card had been lost. And whether he'd used it to take out cash. That person said that he had paid in money at the end of December. The card was blocked. I'm struggling to see that anyone other than Mr A would have made this call.

Mr A says he was unable to access the mobile app and thinks someone else was doing so on 7 and 8 January 2020. Santander says that access was first made using his online banking credentials and then biometric identification. It has no record of him visiting a branch to report problems accessing the app.

A new card was issued on 13 January 2020 and was to be collected from the branch near to his university

Mr A later wrote a letter to Santander about what happened and said he returned to university on Saturday 11 January 2020. A student loan credit was paid into his account on 13 January 2020. And he says he tried to access those funds with his card but was told his account had been closed. The credit of £1,600 had been reported as fraudulently obtained on 14 January 2020. This may be why Mr A thinks he was at university when this happened but as I've set out the payment came earlier.

I'm satisfied that the withdrawals from his account were authenticated with his details. They didn't require access to online banking. And the branch and cash machine withdrawals were made when the chip on his genuine card was read, and the correct PIN entered. I need to decide if he consented to the payments.

Mr A has wanted to clarify when he might have lost a card. But his position must be that he didn't have his card on 8 January 2020. What I am unclear about is how an unknown person would be able to discover his PIN which on the evidence he hadn't used for over a week. Although he also says someone accessed his account online that would have required his security information and again it is unclear how that would have been compromised too. The record of activity online doesn't show his PIN was accessed. It would be a particular risk for a fraudster to take out money in a branch as the card loss may have been reported and they might fail to meet security requirements. CCTV isn't available here. In any event if it was a third party as Mr A says then CCTV wouldn't resolve

whether that person was acting with his authority or not and that's irrespective of whether Mr A was at university at the time or not too.

Having balanced all the information I think it most likely that Mr A authorised the money being withdrawn and that finding doesn't rule out him allowing someone else to use his account. As a result, I find he was complicit in the receipt of and access to fraudulently obtained money. He doesn't seek to say he was entitled to this money.

Santander says that it applied the CIFAS marker because Mr A received fraudulent funds into his account. So, I've looked at whether it 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. 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 A's account of events and the evidence 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 A 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 A had used fraudulently obtained funds based on the evidence it had.

In light of this it closed the account in line with the terms and conditions. I appreciate what Mr A says about the impact of the marker for him but I'm afraid I don't have a basis to require Santander to do anything further.

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 A to accept or reject my decision before 19 May 2023.

Michael Crewe
Ombudsman