

## **The complaint**

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

## **What happened**

Mr G says he found out about the marker in August 2022 when he tried to open an account with a different financial business. He says that he had been selling items online and hadn't carried out any fraud. He says that the claims made that he had received money without sending the items were false. The marker is affecting him now.

Santander said it hadn't made any mistake. It had received two reports that money paid into Mr G's account had been obtained fraudulently. The money had been moved on by him. It had attempted to contact Mr G at the time by letter and phone to ask him about the payments. When it hadn't received a response it had closed the account and added the marker.

Our adjudicator didn't recommend that the complaint be upheld. She thought that Santander had shown it met the standard of proof for a CIFAS marker and had a basis to close his account. It had received two separate reports of fraudulent payments – the first relating to several payments totalling £650 and the other for a payment of £530. Mr G says that due to the time that had passed he no longer had any records about the social media account he was using. And no records to show that these payments were sales transactions. So, while she understood he said he had a legitimate business at the time he hasn't been able to show he was entitled to this money. Santander had attempted to contact him.

Mr G didn't agree and wanted his complaint to be reviewed. He said that he should have a claim against those wrongly reporting him for fraud and so he sees this as a civil matter. He hadn't updated his phone number with Santander at the time and this had cost him dearly. He wanted to know what other checks Santander had made and why its actions were reasonable with no evidence from him. He can't access his online account but can show he spent some £700 on postage for generally sending items around the time. Mr G said he has a continuing business, and this showed he is legitimate. Mr G accepted the account closure but thought that we should consider the wider picture given the sheer volume of trading he has highlighted on his accounts and the impact of the fraud marker for him which has been painful and damaging.

## **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 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.

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 won't be able to say *exactly* what happened and I'll be thinking about what is *most likely*.

I'm satisfied that Santander made reasonable efforts to contact Mr G at the time. It wrote to him saying it wanted to discuss the payments at the address we have on record for him. I've seen a copy of a letter about this dated 19 May 2021 which stated, "*We've been trying to contact you to see if you recognise some payment activity on your account*" and also that the account had been blocked. And it called him on a number which I appreciate he's said he hadn't kept up to date. He was also aware that the account had been closed and given he was using this for his business had the opportunity from that to follow things up earlier. I understand that there had been a review of a previous credit that he had been able to show was genuine.

Mr G has shown the scale of his business then and now. I appreciate what he says about his age at the time. But I also don't think it unreasonable to expect him to have some records even outside of any social media account. I can't know whether the buyers who reported him for fraud had contacted him about the issues and what he did about that. That seems likely before they would go to the step of contacting their own banks and explaining what happened. I take into account that there were two separate fraud reports involved.

Mr G has shown he now has his own company having expanded further. I appreciate that but I'm looking at these specific payments. And I'm afraid despite what he says about the others being made without incident and these buyers making other payments to him, I don't have a basis to find it most likely that he was entitled to this specific money. And that Santander acted unreasonably in adding the marker in these circumstances.

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

As I result I also don't see it made any mistake in closing the account in line with its terms and conditions. I understand what Mr G says about the impact of the marker for him, but I don't have a reasonable basis to require Santander to take any further action. If he doesn't accept my decision he remains free to pursue this matter in court subject to any relevant time limits.

### **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 G to accept or reject my decision before 20 July 2023.

Michael Crewe  
**Ombudsman**