

The complaint

Mr A has complained that Santander UK Plc ('Santander') closed his account without notice and placed a Credit Industry Fraud Avoidance System ('CIFAS'- the UK's fraud alert service) marker against his name. He says this has prevented him from taking out a mortgage and from opening other bank accounts. He wants compensation, the marker removed and for Santander to open a new account for him.

What happened

On 22 July 2021 Mr A called Santander after he noticed a £200 payment that was made into his account by a payee he didn't recognise. He said he wasn't expecting this payment and asked for it to be returned to the sender. The adviser he spoke to said they would wait for the sender to recall the funds and put a note on Mr A's file.

Mr A called Santander again a few days later to say that the money was still in his account and asked what was being done about it. Mr A complained and said that he didn't want the money to stay in his account as it wasn't meant for him, and said he was concerned about spending it. He spoke to a complaints handler who upheld his complaint and offered him £30. The handler said that the adviser Mr A had spoken to on 22 July 2021 should have made arrangements for the funds to be returned. Mr A also reported that he wasn't able to carry out transactions and was told that a block had been placed on his account but the handler he spoke to wasn't sure why that was the case.

In early August 2021 Santander wrote to Mr A to say that it had decided to close his account with immediate effect. Mr A called Santander who said he could take his money by going into a branch.

Mr A complained to Santander in November 2023 and said he'd not long become aware of the fact that a fraud marker had been registered against him. He asked for the CIFAS marker to be removed.

Santander responded but didn't uphold the complaint. It said its decision to block and close the account was in line with its legal and regulatory obligations and also its terms and conditions. It said an investigation had been carried out after the £200 payment was made into Mr A's account and a decision was made to close the account and to register the CIFAS marker. It said the marker was registered as Mr A wasn't able to provide any documentation in support of the credit in question.

Mr A then brought his complaint to us. He said that he wanted the fraud marker removed and that he lost around £2,000 which he had paid to lawyers when trying to take out a mortgage. The mortgage offer was withdrawn, and he believed it was due to the CIFAS

marker. He said he also had banking applications rejected due to it. He said he wanted compensation and for Santander to open another current account for him.

One of our investigators looked into the complaint. She asked Mr A about the impact the CIFAS marker had had on him. He said he applied for a mortgage in October 2022 which was initially approved but later withdrawn. He said though the lender didn't give the exact reason his broker said it was likely to be fraud. He said because of the late withdrawal of the mortgage he lost around £2,000 in lawyer's fees. He said he was also rejected by other banks when he applied for an account with them.

Our investigator thought Mr A's complaint should be upheld. She didn't think Santander had acted fairly and reasonably in registering the CIFAS marker or closing the account with immediate effect. She recommended that Santander pays Mr A £300 compensation for the distress and inconvenience it caused him. She also thought it should remove the CIFAS marker, update Mr A's credit file and pay 8% simple interest on the funds that were in Mr A's account from the date it was blocked to 10 August 2021 when Mr A withdrew his remaining funds.

Mr A accepted the recommendation, but Santander didn't agree and asked for an ombudsman's decision. So, the matter was passed to me to decide.

Before I proceeded with my decision we contacted Santander and pointed to a call note which said that Mr A had called on 22 July 2021 to say that he didn't recognise the £200 payment which had been made into his account that day. The note said that the adviser he had spoken to told him they would sort it out. But the funds were still in the account on 26 July 2021 and Santander told Mr A that the adviser should have made arrangements to get the funds removed and upheld his complaint and paid him £30. So, the note showed that Mr A reported the payment on the day it was paid into his account and Santander had, at the time, accepted that the payment should have been returned. This is something that Santander hadn't previously acknowledged.

Santander said it wasn't able to locate that call. It added that if it had been informed that the card/account had been compromised it would have blocked the account.

We also asked if it had asked Mr A more about the transaction and the reference the payee had used when making the payment but it said it didn't.

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.

The closure of the account

Santander has important legal and regulatory responsibilities to meet when providing accounts to customers. Those obligations are ongoing and don't only apply when an account is opened. They can broadly be summarised as a responsibility to know its customers,

monitor accounts, verify the source and purpose of the funds as well as detect and prevent financial harm.

Santander will review accounts to comply with these responsibilities. It's common practice for banks and other financial service providers to restrict access to accounts to conduct a review- doing so helps prevent potential financial loss or other harm that could otherwise result.

Santander's terms and conditions say that it can close an account by giving two months' notice or with immediate effect in certain circumstances.

Having reviewed all the evidence, including the information Santander provided in response to the investigator's view, I'm satisfied that it was acting in line with its legal and regulatory obligations when it reviewed Mr A's account.

I've also considered the basis for Santander's review, which I find was legitimate and in line with its legal and regulatory obligations.

As I said above, Santander decided to close the account with immediate effect. Having looked at all the evidence and the terms and conditions I'm not satisfied that Santander was acting fairly and reasonably when it closed the account with immediate effect. Santander has provided some further details of its decision-making process which, unfortunately, I can't share due to its commercial sensitivity. But I would have expected to see stronger evidence to support the immediate closure of Mr A's account. And though Santander can, under its terms and conditions, close an account immediately, it hasn't shown me that, on the balance of probabilities, any of the relevant conditions which would enable it to go to immediate closure applied in Mr A's case. It follows that I think 60 days' notice should have been given.

Furthermore, I think Santander should pay Mr A interest on the funds that he had in his account from the day his account was restricted to the day he removed the funds as he wasn't able to use them. This is money that he should have had available to him to use as he wanted. I can't say for sure what the specific cost of not having these funds available would be. It will have influenced a whole host of decisions about spending and borrowing over that time. With that in mind I'm satisfied awarding 8% simple interest on the amount for the period that it wasn't available to Mr A, is appropriate. It is a reflection of the cost of being deprived of these funds. It's also in line with the statutory interest rate on judgment debts.

Mr A said he wanted Santander to open another bank account for him but this isn't something I will be asking it to do. I say this because it's generally for financial institutions to decide whether or not they want to provide or continue to provide banking facilities to a particular customer. Each financial institution has its own criteria and risk assessments for deciding whether to open or close accounts and providing an account to a customer is a commercial decision that a financial institution is entitled to take. Unless there is a very good reason to do so, this service won't usually say that a financial institution must keep a customer.

The CIFAS marker

The marker that Santander has filed with CIFAS is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, it's not required to prove beyond reasonable doubt that Mr A is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. CIFAS says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

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 should not be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

The relevant finding for me to make is whether I think there is sufficient evidence to meet this standard of proof, to determine whether Santander was entitled to escalate its concerns. Having looked at all the information provided, I'm not satisfied it has and I say this because:

- Mr A was the one who reported that the funds had entered his account on the same day. He said he didn't know the payee and wanted the funds returned. And he was the one chasing Santander and asking for it to return the funds during the following few days.
- Santander acknowledged that the funds should have been returned on the same day and paid Mr A compensation for this.
- Santander accepts that it didn't question Mr A regarding the funds and the reference the payee used when making the payment. I think this indicates that its investigation and its evidence wasn't sufficiently rigorous.
- Santander said it registered the marker because Mr A wasn't able to provide proof he was entitled to the funds. But Mr A said that he wasn't expecting the funds and didn't know the payee. So it is understandable that he wasn't able to provide proof of entitlement.
- Mr A has been consistent in his account of events and I don't think Santander had enough evidence to show that it had grounds for more than mere suspicion or concern to say he was being deliberately dishonest.

When I weigh everything up, I'm persuaded by Mr A's version of events that he knew nothing about the payment. Having looked at all the evidence, including some evidence which was shared with us in confidence and which I can't share with Mr A, I don't think that Santander was justified in placing a CIFAS marker against Mr A's name. I don't think there is strong enough evidence to show that Mr A was involved in a deliberate misuse of facility as a money mule. So I will be asking Santander to remove the marker.

Distress and inconvenience

Mr A said that he was seriously impacted by the closure of his account as well as the CIFAS marker. He has shown us that he had applications for new bank accounts rejected. He also said that a mortgage he had applied for didn't go through and that he lost around £2,000 in solicitors' fees as a result. Mr A has provided copies of correspondence with his broker and his solicitors but no evidence that the payments were made and not recovered when the application didn't go through. And he also said that his broker wasn't able to confirm that the reason the mortgage application wasn't successful was due to the CIFAS marker. So, based on the evidence available to me, I don't think there is enough for me to say that, on balance, Mr A's failed mortgage application was due to the CIFAS marker. Or that he lost out financially as a result. I am therefore not minded to award Mr A compensation for this.

Nevertheless, I can appreciate that having an account closed with immediate effect and not being told why can be very frustrating and stressful and it will have meant that Mr A would have had to go to the trouble of finding another bank account immediately, transfer direct debits etc. Furthermore, discovering the CIFAS marker would have also been very stressful for Mr A as it effectively says that a fraud has been committed, which he believes was not the case. As I said above, I don't think Santander acted fairly and reasonably in registering the CIFAS marker or in closing Mr A's account without notice. Bearing in mind the distress and inconvenience these two events will have caused Mr A I think £300 compensation is fair and reasonable and in line with awards we would make in similar circumstances.

My final decision

For the reasons above, I am upholding this complaint. Santander UK Plc must pay Mr A £300 for the distress and inconvenience it caused him. It must also remove the CIFAS marker and update Mr A's credit file/record to reflect this. Santander UK Plc must also pay 8% simple interest per year on the funds that were in Mr A's account when the account was restricted/closed, up to the date Mr A took it out.

Santander UK Plc must pay the compensation within 28 days of the date on which we tell it Mr A accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

If Santander UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 16 August 2024.

Anastasia Serdari
Ombudsman